2140.

SUPREME COURT OF THE UNITED STATES.

No. 80.

JACK T. GRIFFIN AND WIFE, Pl'ffs in Error,

vs.

JAMES Y. REYNOLDS.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Writ of Summons	1	3
Marshal's return	3	4
Declaration	3	4
Plea of defendant	8	6
Replication and issue	10	7
Verdict for defendant	11	8
Motion for new trial granted	12	8
Security for costs	13	9
Notice to defendant Griffin	14	9
Leave granted to amend declaration	15	10
Amended declaration	16	11
Defendant's plea	20	13
Replication and issue	22	14
Jury sworn and cause continued	24	14
Additional plea, by leave of Court	27	16
Demurrer to additional plea	28	16
Judgment	29	17
Bill of Exceptions	29	17
Bond to prosecute writ of error	163	86
Clerk's certificate	165	87
Writ of error	166	87
Citation and service	167	88

2191.

Exemplification.

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE. } 1,004.

Pleas had at a District Court of the United States for the Northern District of Mississippi, began and held at the Town of Pontotoc, in said District, on the first Monday in December, A. D. 1850. Present, the Honorable Samuel J. Gholson, Judge of said Court.

Be it remembered, that on the 1st day of November, A. D. 1850, that James Y. Reynolds, a citizen of the State of Alabama, sued out of the Office of the Clerk of the District Court of the United States for the Northern District of Mississippi, his certain summons, in the words and figures following, to wit:—

UNITED STATES OF AMERICA,
Northern District of Mississippi, ss:

The President of the United States to the Marshal of the Northern District of Mississippi, greeting:—

We command you without delay to summon Jack T. Griffin and Elizabeth S. Griffin his wife, that they be and appear before the District Court of the United States, to be held at the Town of Pontotoc, in and for the Northern District of Mississippi, on the first Monday of December next, to answer to James Y. Reynolds, who is a citizen of the State of Alabama, in a plea of the breach of covenant to the damage of pl'ff ten thousand dollars; and that they do file their plea or defence with the Clerk of said Court, on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness, the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District
[SEAL.] of Mississippi, at Pontotoc, the first Monday of June, A. D. 1850, and the 74th year of the Independence of the United States.

Issued the 1st day of November, 1850.

R. W. EDMONDSON,
Clerk.

Upon which said summons is the following endorsement, to wit:—

This is an action of covenant, brought by pl'ff to recover damages from the defendants for breach of their covenant, in a warranty of conveyance by deed of bargain and sale, to certain premises described in their deed to pl'ff, said deed executed 4th Sept. 1843, to said lands lying and being in the County of Tuscaloosa and State of Alabama; 10,000 dollars damages for said breaches of warranty and covenant is

the amount demanded by this suit. The declaration being filed at the time of issuing this writ. Judgment will be required at the return term thereof.

DAVIS & ACKER,
Att'ys for Pl'ff.

Upon which said summons the Marshal made the following rereturn, to wit:—

Came to hand 11th November, 1850.

WM. McQUISTON,
Marshal No. Dist. Missi.

I, Wm. McQuiston, Marshal of the Northern District of Mississippi, do hereby authorize and appoint Rufus E. Williams my special deputy to execute and return this writ according to law.

Witness my hand and seal, this 11th November, 1850.

WM. McQUISTON, [SEAL.]
Marshal No. Dist. Missi.

Executed on the 12th November, 1850.

RUFUS E. WILLIAMS,
Special Deputy,

For WM. McQUISTON,
Marshal No. Dist. Missi.

And at the issuance of said summons the plaintiff, by attorney, filed his declaration in the words and figures following, to wit:—

(*Declaration.*)

THE UNITED STATES OF AMERICA,

District Federal Court for the Northern of the State of Mississippi at Pontotoc:

December Term, 1850.

James S. Reynolds, by attorney, complains of Jack T. Griffin and Elizabeth S. Griffin his wife, being in the custody, &c., of a plea of breach of covenant.

For that whereas, the said defendants heretofore, to wit: on the 4th day of September, in the year A. D. 1843, at, to wit, in the District aforesaid, made their certain indenture in writing, sealed with their seals, and now to the Court here shown, the date whereof is the day and year aforesaid, and thereby then and there, for the consideration therein mentioned, to wit: the sum of four thousand dollars in hand paid, did grant, bargain, sell, and convey unto the said James S. Reynolds and Mary Ann Reynolds his wife, since deceased,

and to their heirs and assigns forever, certain lands in the said indenture mentioned, to wit: The east ½ of the southeast ¼ of section ten, town 21, of range 11 west; also the west half of the southwest ¼ of section 11, town 21, of range 11 west; the east ½ of the N. W. ¼ of section 12, town 21, of range 11 west; the west ½ of the N. W. ¼ of section 12, town 21, of range 11 west; the east half of the N. W. ¼ of section 14, town 21, range 11 west; the S. W. ¼ of the southeast ¼ of section two, town 21, of range 11 west (and ¼ of same quarter north and east half); the east half of the southeast quarter of section 11, town 21, of range 11 west; the west ½ of the southeast of section 11, town 21, of range eleven west; the east half of the S. W. ¼ of section 11, township 21, of range 11 west; the south half of the east ½, and south ½ of west ½ of the northeast quarter of section 11, township 21, range 11 west; the N. E. ¼ of section 15, township 21, of range 11 west; the S. W. ¼ and west part of that ¼ section 12, town 21, range 11 west, containing fifty acres; the east ½ of the N. E. ¼ of section 14, township 21, range 11 west, containing eleven hundred and eighty acres, more or less, in the district of land subject to sale at Tuscaloosa and State of Alabama, with all and singular the tenements and hereditaments thereunto belonging, or in anywise appertaining; and also all the estate, right, title, interest, claim, or demand whatever, of them the said defendants, either in law or equity, of, in, and to the above bargained premises, and every part and parcel thereof, to have and to hold to the said James S. Reynolds, plaintiff in this action, and Mary Ann Reynolds, wife of the said James S. Reynolds (since deceased), their heirs and assigns, to the hole and only proper use, benefit, and behoof of the said James S. Reynolds plaintiff, and Mary Ann Reynolds his wife (since deceased), their heirs and assigns forever; and the said defendants, for themselves, their heirs, and executors, and administrators, do hereby warrant and will forever defend the title to the above bargained premises to the said James S. Reynolds and Mary Ann Reynolds his wife (since deceased), their heirs and assigns, free from the claim or claims of all and every person or persons whomsoever, as also the claim of the General Government. The said plaintiff, in fact, saith that he hath not been permitted, nor hath he been able at all times, from the date of the said indenture, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said hereditaments and premises in the said indenture mentioned, and thereby intended to be granted and released, or any part thereof, to and for his own use and benefit, without lawful let, suit, trouble, entry, eviction, and ejectment of any person; but on the contrary thereof, on at the time of the *time of the* making the said indenture therein set forth, and continually from thence, and until and at the time of the eviction, ejection, and expulsion hereinafter mentioned, had and still hath lawful right and title to the said premises, with the appurtenances, did enter into the same in and upon the possession of the said tenements, and ejected, expelled,

and removed the said plaintiff against the will of the said plaintiff by due process of law, from the possession and occupation of all and every of the premises with the appurtenances and every part thereof, and kept and held out, and still keeps and holds out him, the said plaintiff, so thereof expelled from his possession and occupation thereof, to wit: at, &c., contrary to the form and effect of the said indenture and of said covenants of the said defendants, as by them in that behalf made as aforesaid; by reason of all which said premises the said plaintiff hath not only entirely lost and been deprived of the said tenement and parcel of land with the appurtenances thereunto belonging, and of divers large sums of money, to wit: the sum of dollars, cost of the action of ejectment for the recovery thereof, and has been further compelled to sustain and undergo, and hath actually sustained and undergone the payment of divers larger sums of money, amounting in the whole to the sum of one thousand dollars, in and about the endeavoring to defend such action of ejectment, to wit: at, &c., aforesaid. And so the plaintiff in fact saith that the said defendants, although often requested so to do, have not kept the said covenant so by them made as aforesaid, but have broken the same, and to keep the same with the said plaintiff, hath hitherto wholly failed and refused and still doth fail and refuse, to the damage of the said plaintiff thousand dollars, and therefore he brings his suit, &c.

DAVIS & ACKER,
Att'ys for Pl'ff.

And at the return term named in said summons, the defendants, by attorney, filed their plea, in the words and figures following, to wit:—

(*Plea.*)

THE UNITED STATES OF AMERICA,
Northern District of Mississippi.

District Court, December Term, 1850.

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE.

And the said defendant, by attorneys, comes and defends the wrong and injury when, &c., and says, that the said plaintiff ought not to have or maintain his aforesaid action against the said defendant, because, he says, that the said plaintiff hath been permitted, and hath been able at all times from the date of the said indenture, peaceably and quietly to have, hold, use and occupy, possess and enjoy the said hereditaments and premises in said indenture mentioned to and for his own use and benefit without lawful let, suit,

trouble, entry, eviction, and ejectment; and that the said at the time of the making of the same indenture, nor at any time since, did not have, nor doth he now, lawful right and title to the said premises and appurtenances in the said indenture mentioned and described; and that the said did not enter into the same, in and upon the same tenements, and eject, expel, and remove the said plaintiff against the will of the said plaintiff, by due process of law, from the possession and occupation of all or any of the premises and appurtenances in said indenture mentioned; and that the said did not keep and hold out, and does not now keep and hold out, him, the said plaintiff, from the possession and occupation thereof, to wit: at, &c., contrary to the form and effect of the said indenture, and of the said covenant of the said defendant, so by them in that behalf made as aforesaid; and that the said plaintiff hath not lost divers large sums of money, to wit: dollars, costs of the action of ejectment for the recovery thereof, and has not been compelled to sustain and undergo, and hath not sustained and undergone the payment of one thousand dollars, or any part thereof, in and about endeavoring to defend such action of ejectment, to wit: at, &c., aforesaid.

And this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them.

LINDSAY & BALDWIN,
Att'ys for Def'ts.

Replication and issue in short by consent.

DAVIS,
Att'y for Pl'ff.

This cause was continued by operation of law, at the December Term, 1850.

And afterwards, to wit: on the 3d day of June, A. D. 1852, it being a day of the June Term thereof, the following proceedings were had, to wit:—

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE. } 1,004.

Tuesday, June 3d, 1851.

This day came the parties, by their attorneys, and this cause was continued upon affidavit of defendant until the next term of this Court.

And afterwards, to wit: on the 1st day of December, A. D. 1851, it being a day of the December Term of said Court, the following proceedings were had, to wit:—

(*1st Verdict for Def't.*)

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN and WIFE. } 1,004.

Monday, December the 1st, A. D. 1851.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit: Jury No. 1, being W. W. Browning and eleven others, who were tried, sworn, and impanelled, well and truly to try the issue joined between the parties who, upon their oaths, do say they find the issue in favor of the defendants. It is therefore considered by the Court, that the defendants recover of the plaintiff their cost in this behalf expended.

Whereupon the plaintiff filed his motion for a new trial in this cause in the words and figures following, to wit:—

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN.

Motion for a new trial in this cause.

1st. Because the jury found contrary to law and evidence.

2d. Because the plaintiff was taken by surprise by the testimony of John Patterson.

3d. Because the Judge erred in the charge to the jury, and for other causes, &c.

DAVIS,
Att'y for Plaintiff.

And afterwards, to wit: on the 3d day of December, A. D. 1851, it being a day of the December Term of said Court, the following proceedings were had, to wit:—

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN and WIFE.

Wednesday, December 3d, A. D. 1851.

This day came on to be heard plaintiff's motion for new trial in this cause, and, after argument of counsel, it is ordered by the Court that the same be sustained and plaintiff taxed with the cost of this term.

And afterwards, to wit: on the 7th day of June, 1852, the defendants filed their affidavit for security for cost, in the words and figures following, to wit:—

UNITED STATES OF AMERICA,
Northern District of Mississippi:

District Court, June Term, 1852.

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE.

This 7th day of June, A. D. 1852, personally appeared before me, Robert W. Edmondson, Clerk of said Court, Jack T. Griffin, one of the defendants in above stated cause, who made solemn oath, that he is informed and believes that James S. Reynolds, the pl'ff in above stated cause, will not be able to pay the costs of said cause, should he be taxed therewith.

J. T. GRIFFIN.

And afterwards, to wit: on the day of June, 1852, the defendants, by attorney, filed their motion for a rule against the plaintiff for security for cost, in the words and figures following, to wit:—

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE.

And the said defendants, by attorney, moves the Court for a rule against said plaintiff for security for costs in above stated cause, on affidavit filed.

BALDWIN & PHELAN
for Motion.

And afterwards, to wit: on the 9th day of June, A. D. 1852, it being a day of the June Term of said Court, the following proceedings were had, to wit:—

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE. } 1,004.

Wednesday, June 9th, A. D. 1852.

This day came on to be heard defendants' motion for security for cost in this cause, and for satisfactory cause to the Court shown, the said motion was sustained; and thereupon Reuben Davis, Esq., came into open Court and acknowledged himself security for cost in this cause.

And afterwards, to wit: on the 7th day of June, 1852, the plaintiff, by attorney, filed a notice to the defendant, in these words:—

Mr. JACK T. GRIFFIN:

SIR: Please take notice that you will be required, on the trial of the case of James S. Reynolds *vs.* Yourself, now pending in the

District Federal Court at Pontotoc, for the Northern District of Mississippi, to produce the 2 original deeds given to you by William Braily, and executed on the 4th day of October, 1841, lying in Tuscaloosa County, Ala., for certain lands therein mentioned, and mentioned as the lands of Robert F. Oliver; and if you fail in this I will offer to read to the Court certified copies of the same, obtained from the Clerk's Office in Tuscaloosa C'ty, Ala.

JAS. S. REYNOLDS.
By R. DAVIS.

This 7th June, 1852.

And afterwards, to wit: on the 9th day of June, A. D. 1853, it being a day of the June Term of said Court, the following proceedings were had, to wit:—

JAMES S. REYNOLDS
vs. } 1,004.
JACK T. GRIFFIN & WIFE.

Tuesday, 9th June, A. D. 1852.

This day came the parties by their attorneys, and thereupon came a jury of good and lawful men, to wit: Jury No. 1, being John Morton, and eleven others, who were tried, sworn, and empanelled well and truly to try the issue joined between the parties, and thereupon this cause was continued over until to-morrow morning.

And afterwards, to wit: on the 10th day of June, A. D. 1852, it being a day of the June Term of said Court, the following proceedings were had, to wit:—

JAMES S. REYNOLDS
vs. } 1,004
JACK T. GRIFFIN & WIFE.

Thursday, 10th June, A. D. 1852.

This day came the parties by their attorney, and also the jury who had been tried, sworn, and empanelled on a former day of this term of the Court, well and truly to try the issue joined between the parties; and thereupon, on application of plaintiff, a juror was withdrawn and this cause continued until the next term of the Court, and leave be given plaintiff to amend his declaration upon the payment of the costs of this term of the Court.

(*Amended Declaration.*)

And afterwards, to wit: On the day of June, A. D. 1852, the plaintiff filed his amended declaration, in the words and figures following, to wit: leave of the Court being first had and obtained.

2198.

THE UNITED STATES OF AMERICA:

Amended Declaration, District Federal Court for the Northern District for the State of Mississippi, at Pontotoc:

June Term, 1850.

James S. Reynolds, by attorney, complains of Jack T. Griffin and Elizabeth S. Griffin, his wife, being in the custody of the Marshal, &c., of a plea of breach of covenant, &c.

For that whereas the said defendants hertofore, to wit: on the 4th day of September, 1843, at, to wit: in the District aforesaid, made their certain indenture in writing, sealed with their seals, and now to the Court here shown, the day whereof is the day and year last aforesaid; and thereby, then and there, for the consideration therein mentioned, to wit: the sum of four thousand dollars in hand paid, did grant, bargain, sell, and convey unto the said James S. Reynolds and Mary Ann Reynolds, his wife (since deceased), and to their heirs and assigns forever, certain lands in the said indenture mentioned, to wit: the east ½ of the southeast ¼ of section ten, township 21, of range 11 west; the east half of the northwest ¼ of section 12, township 21, range 11 west; the west ½ of the southwest ¼ of section 11, township 21, of range 11 west; the west half of the northwest quarter of section 12, township 21, range 11 west; the east ½ northwest ¼ of section 14, township 21, range 11 west; the southwest ¼ of the southeast quarter of section two, township 21, range 11 west, and one ¼ of same quarter north and east half; the east ½ of the southeast ¼ of section 11, township 21, range 11 west; the west ½ of the southeast of section 11, township 21, range 11 west; the east half of the S. W. ¼ of section 11, township 21, range 11 west; the south ½ of the east half, and the south half of the west half, of the northeast ¼ of section 11, township 21, range 11 west; the northeast ¼ of section 15, township 21, range 11 west; the southwest quarter, and west part of that quarter, section 12, township 21, range 11 west, containing fifty acres; the east ½ of the N. E. ¼ of section 14, township 21, range 11 west—containing eleven hundred and eighty acres, more or less, in the district of land subject to sale at Tuscaloosa, and State of Alabama, with all and singular the tenements and appurtenances thereunto belonging, or in anywise appertaining; and also all the estate, right, title, interest, claim, or demand whatever of them, the said defendants, either in law or equity, of, in, and to the above bargained premises, and every part and parcel thereof, to have and to hold to the said James S. Reynolds, plaintiff in this action, and Mary Ann, his wife (since deceased), their heirs and assigns, to the whole and only proper use, benefit, and behoof of the said James S. Reynolds, and Mary Ann, his wife (since deceased), their heirs and assigns forever. And the said defendants, for themselves, and their heirs, and executors, and administrators, do hereby warrant and will forever defend the title to the above bargained premises to the said

James S. Reynolds and Mary Ann Reynolds, his wife (since deceased), their heirs and assigns, free from the claim or claims of all and every person or persons whomsoever, as also the claim of the General Government. The said plaintiff, in fact, saith that he hath not been permitted, nor hath he been able, at all times, from the date of the said indenture, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said hereditaments and premises in the said indenture mentioned, and thereby intended to be granted and released, or any part thereof, to and for his own use and benefit, without lawful let, suit, trouble, entry, eviction, and ejectment of any person; but, on the contrary thereof, Cassius Stoddard and James L. Murphy, at the time of making of the said indenture therein set forth, and continually from thence, and until and at the time of the eviction, ejection, and expulsion hereinafter mentioned, had and still hath lawful right and title to the premises, with the appurtenances, and did, on the 16th day of December, 1848, enter into the same, and in and upon the possession of the said tenements, and ejected, expelled, and removed the said plaintiff, against his will, *by due process of law*, from the possession and occupation of the premises and the appurtenances, and every part thereof, and kept and held out, and still keeps and holds out, him, the plaintiff, of the premises aforesaid, to wit: at, &c. aforesaid, contrary to the form and effect of the said indenture and of the said covenants of the defendants, so by them in that behalf made, as aforesaid.

And for a further breach of the said covenant in the said indenture set forth and mentioned, the said plaintiff says, that after the making of the same, to wit: on the 16th day of December, 1848, and ever since, he, the said plaintiff, hath not been entitled lawfully by virtue of said indenture peaceably and lawfully to have, hold, use and occupy, possess and enjoy the said premises and appurtenances in the said indenture mentioned and thereby intended to be conveyed, or any part thereof, but, on the contrary, at the time of the making of the said indenture and the covenants therein contained, and ever since, Cassius Stoddard and James L. Murphy had and have lawful right and perfect title to the said premises, with the appurtenances, of older date and superior and paramount validity to the title of them, the said defendants, so attempted to be conveyed by the said indenture to the said plaintiff, and have entered upon the said premises and appurtenances by virtue thereof; whereby, and by reason of all said premises, the said plaintiff says, that he is injured and hath sustained damages to the sum of ten thousand dollars, and therefore he brings his suit.

DAVIS & ACKER,
Atty's for Pl'ff.

And afterwards, to wit: on the day of June, the defendants, by leave of the Court first had and obtained, filed their plea to the 2d breach in the plaintiff's amended declaration, in the words and figures following, to wit:—

THE U. S. OF AMERICA,
N. Dist. of Mississippi:

District Court, June T. 1852.

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN & WIFE.

And for further plea in this behalf, the said defendants, by leave of the Court first had and obtained, come and defend the wrong and injury when, &c., and say that the said plaintiff ought not to have or maintain his aforesaid action against the said defendants: because they say that after the execution of said deed, to wit, the 16th day of December, 1848, and ever since, he, the said plff., hath been entitled lawfully, by virtue of said indenture, at all times, from the date of said indenture, peaceably and lawfully to have, hold, use, and occupy, possess and enjoy the said premises and appurtenances in the said indenture mentioned and thereby intended to be conveyed, and every part thereof, and that at the time of the making of the said indenture and the covenants therein contained, and ever since, Cassius Stoddard and James L. Murphy had not nor have lawful right and perfect title to the said premises, with the appurtenances, of older date and superior and paramount validity to the title of them, the said defendants, so conveyed by the said indenture to the said plaintiff, and have not entered upon the said premises and appurtenances by virtue thereof: whereby the said plaintiff hath not been injured or sustained damages to the amount of ten thousand dollars, or any part thereof; and this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereby against them.

BALDWIN & PHELAN,
Atty's for Deft's.

Replication and issue, in short, by consent.

DAVIS & ACKER,
Att'ys for Pl'ff.

And afterwards, to wit: at the June Term, A. D. 1852, the defendants, by attorney, filed their plea of judgment recorded in the words and figures following, to wit:—

UNITED STATES OF AMERICA,
Northern District of Mississippi.

District Court, June Term, 1852.

JACK T. GRIFFIN *et al.*
ats
JAMES S. REYNOLDS.

And the said defendants, by their attorney, and by leave of the

Court first obtained, come and defend the wrong and injury when, &c. And for a further plea in this behalf says, that the said plaintiff should not have or maintain his aforesaid action against him, because he says that heretofore, to wit: on the 24th day of March, 1847, there issued from the office of the Clerk of the Circuit Court of Tuscaloosa County, in the State of Alabama, a writ of *Capias ad respondendum*, in favor of the said pl'ff, commanding the defendant to appear and answer the said plaintiff in a plea of covenant, which writ was executed upon defendants on the same day. Upon this writ, so issued and executed as aforesaid, certain proceedings were had, when, at the August Term of said Circuit Court, in 1849, the venue of said suit was changed to the Circuit Court of the County of Pinkney, in the State of Alabama, when, at the Fall Term of said Court, in 1849, a judgment was recovered against the said defendants, the sum of $\$4833\frac{33}{100}$ dollars. This judgment, so recovered as aforesaid, the defendant avers, was for the same cause of action, and no other, upon which the present complaint of the plaintiff in this action is based and instituted, and this the said defendant is ready to verify by the said record; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him, &c.

BALDWIN & PHELAN,
Att'ys for Def'ts.

Replication and issue, in short, by consent, that the defendants appealed from the judgment mentioned in plea to Supreme Court in Alabama, and the judgment was reversed and remanded, and suit dismissed.

DAVIS & ACKER,
for P't'ff.

And afterwards, to wit: on the 7th day of December, A. D. 1852, it being a day of the December Term of said Court, the following proceedings were had, to wit:—

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN & WIFE. } 1,004

Tuesday, 7th December, 1852.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit: Jury No. 3, being William H. Walton and eleven others, who being duly elected, tried, sworn, and empanelled well and truly to try the issue joined between the parties. Whereupon this cause is continued till to-morrow, to hear further argument.

And afterwards, to wit: on the 8th day of December, A. D. 1852, it being a day of the December Term of said Court, the following proceedings were had, to wit:—

2197.

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN & WIFE. } 1,004

Wednesday, 8th December, 1852.

This day came the parties by attorney; also came the jury of good and lawful men, to wit: jury No. 3, being William H. Walton, and eleven others, who were sworn and empanelled on a former day of this term, to try the issue joined between the parties, and this cause is continued till to-morrow.

And afterwards, to wit: on the 9th day of December, A. D. 1852, it being a day of the December term of said Court, the following proceedings were had, to wit:—

J. S. REYNOLDS
vs.
JACK T. GRIFFIN & WIFE. } 1,004.

Thursday, 9th December, A. D. 1852.

This day came the parties by their attorneys, and also the jury of good and lawful men, to wit: jury No. 3, being William H. Walton, and eleven others, who were sworn and empanelled on a former day of this Court to try the issue joined between the parties, and this cause is continued till to-morrow.

And afterwards, to wit: on the 10th day of December, A. D. 1852, it being a day of the December term, A. D. 1852, of said Court, the following proceedings were had in said cause, to wit:—

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN & WIFE. } 1,004.

Friday, 10th December, 1852.

This day came the parties by attorney, and also the jury, to wit: jury No. 3, being William H. Walton, and eleven others, who were sworn and empanelled on a former day of this term of the Court, to try the issue joined between the parties, whereupon a juror, to wit: William H. Walton, is withdrawn, and this cause is continued till the next term of this Court.

And afterwards to wit: on the 7th day of June, A. D. 1853, it being a day of the June term of said Court, the following proceedings were had, to wit:—

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN & WIFE. } 1,004.

Tuesday, 7th June, A. D. 1853.

This cause is continued on affidavit of defendant. And afterwards, to wit: on the 9th day of June, A. D. 1853, it being a day of the

June term of said Court, the following proceedings were had, to wit:—

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN & WIFE. } 1,004.

Thursday, 9th June, A. D. 1853.

This day came on to be heard the defendants' motion to file an additional plea in this cause; and after argument of counsel said motion was sustained, and the defendants permitted to file their additional plea—and then came on to be heard the plaintiff's demurrer to said additional plea, and after argument of counsel the said demurrer was sustained.

(*Additional Plea of Want of Legal Title.*)

The additional plea referred to in the foregoing order, and filed by leave of the Court, is in the words and figures following, to wit:—

UNITED STATES OF AMERICA,
District Court for the Northern District of Mississippi:
June Term, 1853.

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE.

And the said defendant, for a further plea in this behalf, comes and defends the wrong, &c., and says that the said plaintiff ought not to have and maintain his aforesaid action against him, because he says that, at and before the institution of his said suit, to wit: on the 8th day of March, 1846, and before the time of the said alleged eviction, on the 16th of December, 1848, the said plaintiff had conveyed all his right, title, and interest in and to the said lands, conveyed to him by the said deed of the defendant, to one Abner Winn, by deed bearing date the said 8th day of March, 1846, to secure a certain debt therein mentioned, due by the said plaintiff and wife to one Thomas P. McConnell, and upon certain stipulations and provisions therein expressed; therefore the said defendants say that the said plaintiff cannot maintain his aforesaid action against them, and this the defendants are ready to verify; wherefore they pray judgment, &c.

BALDWIN & PHELAN,
Att'ys for Def'ts.

The demurrer to the foregoing plea, filed by leave of the Court, was filed, in short, by consent, and not reduced to writing.

And afterwards, to wit: on the 7th day of December, A. D. 1853, it being a day of the December term of said Court, the following proceedings were had, to wit:—

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE. } 1,004.

Wednesday, December the 7th, A. D. 1853.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit: jury No. 1, being A. G. Byram and eleven others, tried, sworn, and impanelled well and truly to try the issue joined between the parties, and this cause was continued over until to-morrow morning.

And afterwards, to wit: on the 8th day of December, A. D. 1853, it being a day of the December term of said Court, the following proceedings were had, to wit:—

JAMES Y. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE. } 1,004.

Thursday, December the 8th, A. D. 1853.

This day came the parties, by their attorneys, and also came the jury sworn and impanelled at a former day of the present term of this Court to try the issue joined between the parties, and upon their oaths do say they find the issue in favor of the plaintiff, and assess his damages at the sum of six thousand three hundred and eighty-seven dollars and fifty-five cents, by reason of the non-performance of the promise in the declaration mentioned. It is therefore considered by the Court that the plaintiff recover of the defendants the damages aforesaid assessed, together with his costs in this behalf expended.

(*Exceptions.*)

The defendants, before the jury retired to consider of their verdict, rendered their bill of exceptions, signed, sealed, and ordered to be made a part of the record, which is in the words and figures following, to wit:—

U. S. DIST. COURT,
Northern District of Mississippi, sitting at Pontotoc:

December Term, 1853.

JAMES S. REYNOLDS AND WIFE
vs.
JACK T. GRIFFIN.

This cause coming on to be heard at this term of the Court, before the Honorable S. J. Gholson, presiding judge, the plaintiff offered in evidence the following deed:—

This indenture, made and entered into this fourth day of September, in the year of our Lord one thousand eight hundred and forty-

three, between Jack T. Griffin and Elizabeth S. Griffin his wife, of the first part, and James S. Reynolds and Mary Ann Reynolds his wife, of the second part: Witnesseth that the said parties of the first part, for in consideration of the sum of four thousand dollars to them in hand paid, at and before the sealing and delivery of these, by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and doth by these presents, grant, bargain, sell, and convey unto the said party of the second part, and to their heirs and assigns forever, the following described tract or parcel of land lying and being in the County of Tuscaloosa and State of Alabama, known as E. ½ of the southeast ¼ section ten, township twenty-one of range eleven west; also the west ½ of the southwest ¼ of section eleven, township twenty-one, range eleven west; the east half of the northwest ¼ of section twelve, township twenty-one of range eleven west; the west half of the northwest quarter of section twelve, township twenty-one of range eleven west; east ½ of the northwest ¼ of section fourteen, township twenty-one, range eleven west; the southwest ¼ of the southeast ¼ of section two, township twenty-one, range eleven west; the west ½ of the southeast ¼ of section eleven, township twenty-one of range eleven west; and ¼ of the same ¼ north and east half; the east ½ of the southeast ¼ of section eleven, township twenty-one of range eleven west; the west half of the southeast of section eleven, township twenty-one of range eleven west; the east half of the southwest ¼ of section eleven, township twenty-one of range eleven west; the south ½ of the east ½, and south ½ of the west ½ of the northeast ¼ of section eleven, township twenty-one of range eleven west; the northeast ¼ of section fifteen, township twenty-one of range eleven west: the southwest ¼ and west part of that quarter section twelve, township twenty-one, range eleven west, containing fifty acres; the east ½ of the northeast ¼ of section fourteen, township twenty-one of range eleven west, containing eleven hundred and eighty acres more or less in the district of land, subject to sale at Tuscaloosa, and State of Alabama; together with all and singular the tenements and appurtenances thereunto belonging, or in anywise appertaining; and also all the estate, right, title, interest, claim, or demand whatever of them the said parties of the first part, either in law or equity, of, in, and to the above bargained premises, and every part and parcel thereof, to have and to hold to the said parties of the second part, their heirs and assigns, to the *hole* and only proper use, benefit, and behoof of the said parties of the second part, their heirs and assigns forever: And the said parties of the first part for themselves, their heirs and executors, and administrators, do hereby warrant and will forever defend the title of the above bargained premises to the said James S. Reynolds and Mary Ann Reynolds his said wife, their heirs and assigns, free from the claim or claims of all and every person or person whomsoever, as also the claims of the General Government.

In testimony whereof the aforesaid parties of the first part hath hereunto set their hands and affixed their seals the day and year above written.

JACK T. GRIFFIN, [SEAL.]
ELIZABETH S. GRIFFIN, [SEAL.]

Signed, sealed, and delivered in presence of
WM. THOMPSON.

THE STATE OF ALABAMA,
Tuscaloosa County:

Personally appeared before me, William Thompson, an acting Justice of the Peace for said county, Jack T. Griffin and Elizabeth Griffin his wife, who severally acknowledges that they assigned, sealed, and delivered the foregoing deed to James S. Reynolds and Mary Ann Reynolds his wife, on the day and year therein mentioned, for the purposes therein specified. Given under my hand and seal this 15th day of Sept., 1843.

WM. THOMPSON, *J. P.* [SEAL.]

Filed for registration on the 5 October, 1843, and on the 30th day of same month and year recorded in Book T, pages 313 and 314.

MOSES McGUIRE,
Clerk.

To this deed the defendant objected because the plaintiff did not prove its execution, which objection was overruled, and the deed permitted to be read, and the defendant excepted.

The plaintiff then offered in evidence the following record:—

THE STATE OF ALABAMA:

Pleas at March term of the Circuit Court of Tuscaloosa County, in the year of our Lord one thousand eight hundred and forty-seven, before the Honorable John D. Phelan, one of the Judges of the Courts of law in said State, presiding in the third Circuit.

JOHN DOE *ex dem.* CASSIUS STODDARD and JAMES L. MURPHY, Trustees &c., Plaintiffs,
vs.
JACK T. GRIFFIN, Defendant.

Trespass, to try titles.

Be it remembered, that on the day of September, in the year of our Lord one thousand eight hundred and forty-three, was returned to and filed in the Clerk's Office of said Court a declaration and notice, which are in the following words and figures, to wit:—

THE STATE OF ALABAMA,
Tuscaloosa County:

In the Circuit Court, as of March Term, 1843.

John Doe, plaintiff, by attorney complains of Richard Roe, defendant in custody, &c. of trespass and ejectment, &c. For that whereas James McCown, on the first day of January, in the year one thousand eight hundred and forty, in the county aforesaid, had demised unto the said John Doe, certain tracts and parcels of land, to wit: The east half of the southeast quarter of section ten; the west half of the southwest quarter of section eleven; the west half of the northwest quarter of section twelve; the east half of the northwest quarter of section twelve; the east half of the northwest quarter of section fourteen; the west half of the southeast quarter of section two; the northeast quarter of section eleven; the southeast quarter of section eleven; the east half of the southwest quarter of section eleven; the northeast quarter of section fifteen; the southwest quarter of section eleven; the east half of the northeast quarter of section fourteen; all situate, lying and being of the county of Tuscaloosa, and in Township Number Twenty-one, in range eleven, west of land subject to sale at the land office at Tuscaloosa. To have and to hold to the said John Doe, and his assigns thenceforth, for the term of twenty years thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said John Doe entered into the said lands, with the appurtenances, and became and was possessed thereof, for the said term so to him thereof granted; and the said John Doe being thereof possessed, the said Richard Roe afterwards, to wit: on the day and year aforesaid, with force and arms entered into the said lands and tenements with the appurtenances, in which the said John Doe was so *entereted* in manner and for the term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, against the peace and dignity of the State of Alabama. And also for that whereas James McCown, on the said first day of January, in the year one thousand eight hundred and forty, in the county aforesaid, had demised unto the said John Doe certain other tracts and parcels of land, to wit: a certain tract beginning at the northeast corner of section eleven; running thence south to the southeast corner; thence to the half mile stake in section fourteen; thence west four hundred and eighty poles to the southwest corner of the northeast quarter of section fifteen; thence north two hundred and forty poles to the northwest corner of a forty entered by Robert Oliver; thence east eighty poles to a stake; thence north eighty poles to Caddel's Creek; thence down the meanders of said creek to the line where it crosses said creek, between section ten and eleven; thence north to the half mile stake; thence east one hundred and sixty poles to a stake; thence north two hundred poles to a stake; thence east eighty poles to a stake; thence north forty poles to a

corner; thence east eighty poles to a stake in section line; thence south eighty poles to the beginning; thence east one hundred and sixty poles to the half mile stake; thence south one hundred and forty poles; thence west one hundred and ten poles; thence south one hundred and fifty poles to a stake; thence west fifty poles to the southeast corner of section eleven; also, forty acres lying south of said land, and between Big Creek and Big Cypress Swamp, containing thirteen hundred and seventy acres, more or less, all lying and being in the said County of Tuscaloosa. To have and to hold the same to the said John Doe and his assigns thenceforth, for the term of twenty years next ensuing, and fully to be complete and ended; by virtue of which said demise the said John Doe entered into the said lands with the appurtenances, and became and was possessed thereof for the said term so to him thereof granted; and the said John Doe being thereof possessed, the said Richard Roe afterwards, to wit: on the day and year aforesaid, with force and arms, entered into the said tenements with the appurtenances, in which the said John Doe was so interested in manner, and for the term aforesaid, which is not expired, and ejected the said John Doe from his said farm, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama. And also, for that whereas, Cassius Stoddard and James L. Murphy, on the first day of December, in the year one thousand eight hundred and forty-two, in the county aforesaid, had demised unto the said John Doe certain other tracts and parcels of land, to wit: The east half of the southeast quarter of section ten; the west half of the southwest quarter of section eleven; the west half of the northwest quarter of section twelve; the east half of the southwest quarter of section twelve; the east half of the northwest quarter of section fourteen; the west half of the southeast quarter of section two; the northeast quarter of section eleven; the southeast quarter of section eleven; the east half of the southwest quarter of section eleven; the northeast quarter of section fifteen; the southwest quarter of section eleven; the east half of the northeast quarter of section fourteen; all situate, lying, and being in the County of Tuscaloosa, and in Township number twenty-one, in range eleven, west, of land subject to sale at the Land Office at Tuscaloosa. To have and to hold the same to the said John Doe and his assigns thenceforth, for the term of twenty years thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said John Doe entered into the said lands with the appurtenances, and became and was possessed thereof for the said term so to him thereof granted; and the said John Doe being thereof possessed, the said Richard Roe afterwards, to wit: on the day and year aforesaid, with force and arms, entered into the said tenements with the appurtenances in which the said John Doe was so interested in manner and for term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm, and other wrongs to the said John Doer

then and there did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama. And also, for that whereas, Cassius Stoddard and James L. Murphy, on the first day of December, in the year one thousand eight hundred and forty-two, in the county aforesaid, had demised unto the said John Doe certain other tracts and parcels of land, to wit: a certain tract beginning at the northeast corner of section eleven, running thence south to southeast corner; thence to the half mile stake in section fourteen; thence west four hundred and eighty poles to the southwest corner of the northeast quarter of section fifteen; thence north two hundred and forty poles to the northwest corner of a forty entered by Robert Oliver; thence east eighty poles to a stake; thence north eighty poles to Caddel's Creek; thence down the meanders of said creek to the line where it crosses said creek, between section ten and eleven; thence north to the half mile stake; thence east one hundred and sixty poles to a stake; thence north two hundred poles to a stake; thence east eighty poles to a stake; thence north forty poles to a corner; thence east eighty poles to a stake in section line; thence south eighty poles to the beginning; thence east one hundred and sixty poles to the half mile stake; thence south one hundred and sixty poles; thence west one hundred and ten poles; thence south one hundred and sixty poles to a stake; thence west fifty poles to the southeast corner of section eleven; also forty acres lying south of said land, and between Big Creek and Big Cypress Swamp, containing thirteen hundred and seventy acres, more or less, all lying and being in the said County of Tuscaloosa. To have and to hold the same to the said John Doe and his assigns thenceforth, for the term of twenty years thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said John Doe entered into the said lands with the appurtenances, and became and was possessed thereof for the said term so to him thereof granted. And the said John Doe being thereof possessed, the said Richard Roe afterwards, to wit: on the day and year aforesaid, with force and arms, entered into the said tenements with the appurtenances, in which the said John Doe was so interested in manner and for the term aforesaid, which is not yet expired, and ejected the said John Doe from his said farm, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the State of Alabama. Therefore, the said John Doe saith he is injured, and hath sustained damage to the value of five thousand dollars, and therefore he brings suit, &c.

WM. COCHRAN,
Attorney for Pl'ff.

MR. JACK T. GRIFFIN:

I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action, as a casual ejector only, and

having no claim or title to the same, do advise you to appear before the Hon. the Judge of the Circuit Court for the county of Tuscaloosa, in the State of Alabama, at the court-house of said county, on the 4th Monday of September instant, by some attorney, or in person, and then and there, by rule of the said Court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment thereon to be entered against me by default, and you will be turned out of possession. Dated this 9th September, 1843.

RICHARD ROE.

Upon which said declaration and notice, the Sheriff of Tuscaloosa County, aforesaid, made the following endorsement, to wit:—

Received in office 9th September, 1843, and executed September 12th, '43.

DAN'L GRIBBS,
Sheriff.

CIRCUIT COURT,
Tuscaloosa County.

John Doe ex dem. *vs.* Richard Roe, trespass in ejectment, for the following premises, situate in the county of Tuscaloosa, and in township 21 of range eleven, west of the basis meridian of Huntsville, to wit: The northwest quarter of section twelve, containing one hundred and fifty acres, more or less; part of the west half of the southwest quarter of section twelve, containing one hundred and sixty acres, more or less; northeast quarter of section eleven, containing one hundred and sixty acres, more or less; southeast quarter of section eleven, containing one hundred and sixty acres, more or less; southwest quarter of section eleven, containing one hundred and sixty acres, more or less; part of the east half of the southeast quarter of section ten, containing sixty acres, more or less; southwest quarter of the southeast quarter of section ten, containing forty acres, more or less; southeast quarter of the southeast quarter of section two, containing forty acres, more or less; half of the southwest quarter of the southeast quarter of section two, containing twenty acres, more or less; the northeast quarter of section fifteen, containing sixty acres, more or less; the east half of the northwest quarter of section fourteen, containing eighty acres, more or less; and the east half of the northwest quarter of section fourteen, containing eighty acres, more or less.

It is ordered, by consent of William Cochran, Esq., attorney for the plaintiff, and Martin and Huntington, Esquires, attorneys for Jack T. Griffin, who claims title to the premises in question, that the said Jack T. Griffin shall be admitted defendant instead of the now defendant, Richard Roe, and that they shall immediately appear by their said attorneys, who shall receive a declaration and plead thereto the general issue, and that at the trial to be had thereon the said shall appear in their proper person, or by their attorney

or counsel, and confess lease, entry, and ouster, and insist upon title only, and confess that they were at the time of the service of the declaration, in possession of the said premises, and that if on said trial said shall not confess such possession, as well as lease, lease entry, and ouster, whereby the plaintiff shall not be able further to prosecute his said suit against the said that then no costs shall be allowed for not further prosecuting the said cause. But the said shall pay costs to the plaintiff in that case to be taxed. And it is further ordered that if, upon the trial of the said issue, a verdict shall be given for the said , or it shall happen that the plaintiff shall not further prosecute his said suit for any other cause than for not confessing possession, lease entry, and ouster, then the lessor of the plaintiff shall pay to the said costs in that case to be adjudged.

MARTIN & HUNTINGTON,
Attorneys for defendant.

COCHRAN & WALLACE.
Attorneys for plaintiff.

Circuit Court. Term, 1845. Pleas.

JOHN DOE, *ex dem.*
vs.

And the said defendant, by Martin and Huntington, their attorneys, come and defend the force and injury when, &c., and say they are not guilty of the said supposed trespass and ejectment above laid to their charge, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country, &c.

MARTIN & HUNTINGTON,
Attorneys for Defendant.

And at the September Term of said Court, in the year 1844, came the parties by their attorneys; whereupon, on motion, it is ordered that this cause be continued as on affidavit of plaintiff.

And at special November Term of said Court, in the year 1846, came the parties by their attorneys; whereupon, on motion, it is ordered by the Court that this cause be continued as upon affidavit of defendant.

And at March Term of said Court, in the year one thousand eight hundred and forty-seven, up to which time said cause had been regularly continued, came the parties by their attorneys; and thereupon came a jury of good and lawful men, to wit: James Rhone and eleven others, who, being elected, impanelled, tried, and sworn well and truly to try the issue joined, heard a part of the evidence, when Court adjourned until half after 8 o'clock on to-morrow morning.

Wednesday, 24th March, 1847.

Court met pursuant to adjournment, whereupon came as well the parties by their attorneys as the jurors aforesaid, and the balance of the evidence and the arguments of counsel being closed, the said jurors upon their oaths do say they find the said defendant, the said Jack T. Griffin, guilty of the trespass and ejectment in the plaintiff's declaration mentioned, and assess the plaintiff's damages to the sum of ten cents. It is therefore considered by the Court that the plaintiffs recover possession of the land and premises in their consent rule mentioned, to wit: the following premises situate in the County of Tuscaloosa, and in Township twenty-one of range eleven, west of the basis meridian of Huntsville, to wit: The northwest quarter of section twelve, containing one hundred and sixty acres, more or less; part of the west half of the southwest quarter of section twelve, containing one hundred and sixty acres, more or less; northeast quarter of section eleven, containing one hundred and sixty acres, more or less; southeast quarter of section eleven, containing one hundred and sixty acres, more or less; southwest quarter of section eleven, containing one hundred and sixty acres, more or less; part of the east half of the southeast quarter of section ten, containing sixty acres, more or less; southwest quarter of the southeast quarter of section ten, containing forty acres, more or less; southeast quarter of the southeast quarter of section two, containing forty acres, more or less; half of the southwest quarter of the southeast quarter of section two, containing twenty acres, more or less; the northeast quarter of section fifteen, containing sixty acres, more or less; the east half of the northwest quarter of section fourteen, containing eighty acres, more or less; and the east half of the northwest quarter of section fourteen, containing eighty acres, more or less; and that a writ of possession issue: And it is further considered by the Court, that the said plaintiffs recover of the said defendant, the said Jack T. Griffin, the sum of ten cents, their damages by the jury aforesaid assessed, besides their costs by them in this behalf expended, and the defendant in mercy, &c.

And afterwards, at the term last aforesaid, came the parties by their attorneys; whereupon the defendant moved the Court for a new trial in this cause upon the ground, 1st, that the jury found a verdict contrary to evidence; 2, against law, and in violation of the charge of the Court; 3, upon affidavits filed; which motion being argued by counsel and duly considered of, is by the Court overruled.

Circuit Court, Tuscaloosa. March Term, 1847.

DOE, ex dem. STODDARD & MURPHY
vs.
JACK T. GRIFFIN.

Be it remembered, that on the trial of this cause, the plaintiffs, to show their right to sue, and in support of his issue, offered in evi-

dence a certain decree by the Chancery Court of Tuscaloosa County in the words and figures following:—

IN CHANCERY,
Tuscaloosa County:

SAMUEL REECE *et al.*
vs.
JAMES MCCOWN AND OTHERS.

November 10th, 1842.

This is a bill filed for the appointment of a trustee to execute, according to their terms, certain deeds, fourteen in number, which are, as exhibits, made a part of this bill. The bill also prays for a receiver and other relief, which it is not necessary at this time to refer to. The bill sets out that, from causes alleged in the bill, James McCown, the trustee named in the deeds, is an improper person to execute the same; and that, in fact, the trustee, by a proceeding under the statute, has been discharged from the trust contained in the said deeds. It appears that all the parties to the bill had notice of the pendency of the suit. The bill is a creditor's bill, and seeks to subject the lands mentioned in the respective deeds of trust as a fund or security provided by the debtors who made the deeds for the payment of the debts of the partnership mentioned in the bill. It having been referred to the Register, to state and report a suitable person or persons to be appointed trustees in this behalf, and the Register having reported that Cassius Stoddard and James L. Murphy are suitable persons in that respect, and it appearing that they are willing to assume the duties of the trust, it is therefore ordered that Cassius Stoddard and James L. Murphy be, and they are hereby appointed trustees to do and execute every act, matter, and thing in the execution of the said trust deed herein referred to, in the same manner, and to the same extent, and with like powers, in all respects, as if named trustees originally in the aforesaid deeds of trust; and the said bill having been taken as confessed against the said James McCown, on personal service, it is ordered that he be discharged from the trust created in him by the said deeds respectively. And, for the purpose of quieting the title, and insuring, as far as possible, the sales of the lands at adequate prices, it is ordered that if the tenants in possession of the lands by the said deeds conveyed respectively, refuse to recognize the titles by the said deeds conveyed, and to deliver up the possession of the said lands to the said trustees, for the purpose of the same being sold under the terms of the said respective trust deeds and this order, that then the said trustees are directed, in the name of the acting trustee or trustees, to institute the necessary proceedings or suits at law of ejectment, or otherwise to enforce the title by the said trust deeds intended to be conveyed: and it is further ordered that, upon the death, resignation, or refusal to act, of either of the trustees, the power herein conferred shall inure to

the survivor or to the acting trustee; and that in the event of the death, resignation, or refusal to act, of both, that the Register of this Court appoint a trustee in their stead until the further order of this Court: and it is further ordered that no part of the purchase-money upon sales shall at any time go to the hands of any trustee, but that the same shall be paid over to the Register of this Court, to be by him retained until the further order of this Court; and it is made the duty of the purchaser at sales by the trustee to see that the proceeds of the sale are paid over to the Register of this Court, as before provided: and it is further ordered that the judgment creditors of the said partnership, on filing with the Register of this Court a transcript of their judgment, may, by the Register of this Court, be made party complainants to the said bill: and it is further ordered that the trustees from time to time appointed by this Court shall be permitted to take into their possession the trust deeds and articles of agreement, exhibits in this cause, for the necessary purposes of discharging their duty in respect to the said trust.

A. BOWIE,
Chancellor.

To the admission of this decree in evidence the defendant objected, because, at the time the same was rendered, the defendant was in possession of the land under a sheriff's deed, and yet was not a party to the proceeding in chancery; which objection was overruled, and the plaintiff excepted. The plaintiffs then introduced in evidence the following deed from Robert Oliver to James McCown as the foundation of their title:—

THE STATE OF ALABAMA,
Tuscaloosa County:

This indenture, made the —— day of ——, in the year of our Lord one thousand eight hundred and thirty, between Robert Oliver, of the county of Tuscaloosa, and in the State aforesaid, of the first part, and James McCown of the second part: Whereas, by articles of association and copartnership, entered into on the twenty-first day of September, in the year of our Lord one thousand eight hundred and thirty-eight, Alexander McCown, Charles M. Conrow, Benjamin S. Wilson, Guilford R. Wilson, Abel H. White, Robert Oliver, Chapman A. Hester, Baker Hobson, Phiaudius P. Brown, Daniel P. Man, Ambrose K. Ramsey, John McCain, and Benjamin Williams did agree between themselves to form themselves into a firm and copartnership for the purpose of buying and selling all kinds of merchandise, wares, and such other description of real estate and property as the acting partners of the firm might, for the time being, from time to time deem advisable for the interest of the concern, under the following names and firms, to wit: Conrow, Ramsey & Company, in the city of Tuscaloosa; McCown, Hobson, Williams & Company, at Mobile and at the city of New Orleans; and Hester, Wilson, White &

Company, in the city of New York: and whereas, by the third article of said association it is provided that, as a basis for the capital of the company, each individual member thereof did agree to execute a deed of trust upon real estate, at cash valuation, to a trustee to be appointed by the company, for the full amount of his investment or share in the concern, and which should be unincumbered, and become pledged for the payment of all debts contracted by the copartnership; and to pay into the concern one per cent. upon the amount of his investment, and such other further cash payments as might become essential in order to pay the debts or provide for the engagements of the company: and whereas, by the voice and determination of the said several parties to the said articles, the said James McCown has been selected for, and has consented to serve as, the trustee under and for the purposes of said third article aforesaid—now, this indenture witnesseth that, for and in consideration of the premises and of the terms and conditions of the above recited article of copartnership, and in further consideration of the benefits, privileges and emoluments, gains and profits accruing to and secured to him under the said articles of copartnership as aforesaid, the particulars whereof will more fully and at large appear by reference thereto, now on file and of record in the office of the Clerk of the County Court of Tuscaloosa County; and, in further consideration of the sum of ten dollars, to the said party of the first part paid by said James McCown, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged by the said the party of the first part, hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm, unto the said James McCown, and his heirs and assigns, all and singular that parcel of land, viz: beginning at the northeast of section eleven; running thence south to the southeast corner; thence to the half-mile stake in section fourteen; thence west four hundred and eighty poles, to the southwest corner of the northeast quarter of section fifteen; thence north two hundred and forty poles, to the northwest corner of a forty entered by R. O.; thence east eighty poles, to a stake; thence north eighty poles, to Caddel's Creek; thence down the meanders of said creek, to the line where it crosses said creek between section ten and eleven; thence north to the half-mile stake; thence east one hundred and sixty poles, to a stake; thence north two hundred poles to a stake; thence east eighty poles to a stake; thence north forty poles to a corner; thence east eighty poles to a stake in section line; thence south eighty poles to the beginning; thence east one hundred and sixty poles to the half mile stake; thence south one hundred and sixty poles; thence west one hundred and ten poles; thence south one hundred and sixty poles to a stake; thence west fifty poles to the southeast corner of section eleven; also forty acres lying south of said land and between Big Creek and Big Cypress Swamp; containing thirteen hundred and seventy acres more or less, together with all and singular the rever-

sion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the right, title, estate, property, interest, claim, and demand whatsoever, both in law and in equity howsoever of him the said party of the first part, of, in, and to the same, with the appurtenances. To have and to hold the same, and every part and parcel thereof, with the appurtenances, unto the said James McCown, his heirs and assigns, forever. In trust, nevertheless, and to and for the uses and purposes hereinafter mentioned; that is to say, that the said lands, tenements, and appurtenances shall be held by the said James McCown in trust for the payment of all and singular the debts contracted by the said copartnership aforesaid, and be liable for the same as provided for in said articles of copartnership aforesaid in manner following, that is to say, Conrow, Ramsay & Co. It is hereby covenanted and declared, by and between the said parties to these presents, that in the event of the debts contracted by the aforesaid copartnership, or either of them, becoming due, or any or either of the liabilities of said firm or firms, or either of them, remaining due and unpaid, and there shall not be sufficient funds of said copartnership to pay off and discharge the same, then and in that event it shall be, and is hereby declared to be lawful for the said James McCown, at the request of any of the creditors or creditor of said company, or of the acting partners thereof, to take into his possession the before granted real estate, or any part thereof, and the same to sell for cash at public vendue, giving six months' notice thereof by advertisement in some public newspaper published in the town of Tuscaloosa, and the proceeds thereof to pay over and disburse toward the payment of the said debt and liabilities of said copartnership and company, according as in his discretion may be just to the parties concerned, and in conformity with the true intent and meaning of said articles aforesaid. And it is hereby covenanted, declared and agreed, by and between the said parties to these presents, that if upon the call of the acting partners of the said firm or copartnership, the said Conrow, Ramsay & Co. shall fail, neglect, or refuse for the space of twenty days to provide and pay such cash payments as may and shall become necessary to pay the debts or provide for the engagements of said company, then and in that event the said James McCown shall, at the request of the said acting partners of said firm, proceed to sell and expose to sale for cash at public vendue, by notice in some newspaper as aforesaid, all and singular the said estate and property herein conveyed, or any part thereof, and out of the proceeds thereof to be retained in his hands, to pay over to the said acting partners of the said firm and company, or to such person as they may appoint, all and singular such amounts of cash payments as may from time to time be required to pay the debts, or provide for the engagements of said company, agreeably to the aforesaid articles of copartnership, and the balance and remainder thereof to retain until all the debts and liabilities of said firm are discharged, or the said proceeds exhausted. And it is

hereby declared to be the true intent and meaning of these presents, that the said trust hereby created shall not be considered at an end and discharged by a partial sale of the said estate hereby conveyed, or a partial appropriation of the proceeds of such sale, but that the same shall continue until the liabilities and debts of said company are fully discharged, or the estate or proceeds thereof fully and entirely exhausted, in the manner aforesaid. And it is agreed that the said trustee may cause the trust estate aforesaid, or any part thereof, to be insured at his discretion, and deduct the premium of such insurance. And it is agreed that said trustee shall not be chargeable for any more than what he shall actually receive by virtue of these presents, nor accountable for any losses that shall happen in the management or disposal of said trust estate, without his wilful default or neglect. And the said party of the first part covenants, that he has not heretofore assigned, incumbered, received, or discharged, all or any part of the premises hereby assigned in trust, and that he will not do or suffer any act to hinder or obstruct the said trustee from recovering or receiving the same or any part thereof, or such satisfaction as may be had for the same. And the said party of the first part covenants, at the request and at the costs of the said trustee, to perform and execute all reasonable acts necessary to the performance of the said trusts, and for the further and better assuring, granting, and conveying of the premises hereinbefore mentioned or intended to be granted and conveyed in trust, and for enabling the said trustee to collect, recover, and receive the same, and any and every part thereof. And in case the said James McCown, trustee as aforesaid, shall happen to die possessed of the said trust estate, or money arising from the sale of the same as aforesaid, it is agreed that the said copartnership, or the major number of them, shall appoint another person to be trustee in the place of the said James McCown, in writing, under their hands; and upon such appointment and reasonable notice therein unto the executors or administrators of the said James McCown, they shall deliver, assign, and convey all and singular the trust estate and premises unto such new trustee, subject to the trust hereinbefore declared, and to such other covenants, conditions, and agreements, as shall be agreed upon between the said copartners or the major number of them and the said other trustees so appointed as aforesaid. And the said James McCown, for himself, his heirs, executors, and administrators, covenants and agrees with the said party of the first part, his executors and administrators, and with the said copartners severally, that he will faithfully execute all the trusts herein and hereby in him, and will, at the request of the said copartners, or the major part of them, account with them in writing touching the said trusts, and will make a just return of all trust moneys which he shall receive (after the deductions above provided for) to the said according to the true intent of this indenture. ROBERT OLIVER. [SEAL.]

Test.

CASSIUS STODDARD.

THE STATE OF ALABAMA,
Tuscaloosa County:

Personally appeared before me, Moses McGuire, Clerk of the County Court for said County, Cassius Stoddard, a subscribing witness to the foregoing deed of trust, who being sworn, saith that he saw Robert Oliver sign, seal and deliver the same on the day and year therein mentioned, to the aforesaid James McCown, and that he, this deponent, signed the same as a witness, in presence of Robert Oliver.

Given under my hand and seal, this 8th day of December, 1838.

MOSES McGUIRE, [SEAL.]
Clerk.

Filed for registration, the 8th day of December, 1838, and on the day and year recorded in book O, pages 480, 481, 482 and 483.

Test. MOSES McGUIRE,
Clerk.

They then introduced, to show a right on the part of the trustees to proceed and sell, a judgment in favor of William Murphy rendered on the day of A. D. on a promissory note for $ dated and made payable by Conrow, Ramsey & Co., on the which judgment remained unsatisfied; to the admission of this judgment and promissory note the defendant objected, because the said William Murphy was neither a party to the present proceedings, nor to the proceedings in Chancery; but this objection was overruled, and the defendant excepted. The plaintiff did not introduce in evidence the articles of copartnership referred to in the deed, or show any consideration for its making, except the recitals contained therein. It was shown that said copartnership went into business. The defendant, to show that the design of the Company (which was proved to be commonly called the Muggins Company) was to defraud the public, offered one Leonard B. Neal as a witness to prove that those most active in getting up the concern, and partners in it, but not the said Robert Oliver, proposed to him, while the Company was forming, to join, and also the object and designs of the Company, as explained to witness, by the partners in the course of the proposition to him; to the admission of which the plaintiffs objected, and their objection being sustained by the Court, the defendant excepted. The defendant further proved that the company was composed, for the most part, of individuals in desperate and embarrassed circumstances; that they resorted to various shifts and devices to circulate among the community a large amount of paper as money which had not been redeemed; that the individual members of the company, including Robert Oliver, had all become insolvent, and run away or departed this life. Defendant further proved that he had

title to the land in controversy, through two sheriffs' deeds or judgments against Robert Oliver, one on his individual note, the other on a bill endorsed by the said company that the bill of exchange and promissory note which were the foundation of said judgment had both been given *before the making of the deed* from Oliver to McCown. The said deeds were made subsequent to said deed in trust. There was evidence going to show that Oliver was embarrassed in his circumstances when he made said deed. The defendant moved the Court, after the closing of the testimony on both sides, to exclude from the jury the deed from Oliver to McCown, on the ground that the articles of copartnership alluded to therein, had not been produced in evidence, nor any other consideration thereon beyond the recitals in the deed, and that the said copartnership did business as such; which motion was overruled by the Court, and the defendant excepted. The defendant then moved the Court to charge the jury that the deed from Oliver to McCown was fraudulent on its face, which the Court refused and the defendant excepted—but the Court charged the jury, that if they believe, from the evidence, that said deed had been made to hinder, delay, or defraud creditors, the same was void, and that they should find for the defendant. Signed, sealed, and made part of the record, this 3d April (in term time), 1847.

JNO. D. PHELAN. [SEAL.]

THE STATE OF ALABAMA,
Tuscaloosa County:

Know all men by these presents, that we, Jack T. Griffin and Thomas P. McConnel, are held and firmly bound unto John Doe *ex dem.* Cassius Stoddard and James L. Murphy, trustees, &c., in the sum of five hundred dollars to be paid to the said Stoddard & Murphy, trustees, &c., their heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 10th day of April, 1847. The condition of the above obligation is such, that whereas the said Jack T. Griffin hath this day applied for and obtained a writ of error, directed to the Clerk of the Circuit Court of said County, by which he is required to send to the Supreme Court, to be holden for said State, in the City of Tuscaloosa, on the first Monday in June next, a transcript of the record and proceedings had at March Term of said Circuit Court in the year 1847, together with all things touching the same, in a certain suit wherein the said John Doe *ex dem.* Cassius Stoddard and James L. Murphy, trustees, &c., obtained a judgment, the said Jack T. Griffin for the sum of ten cents damages besides the costs, and also a judgment for the possession of certain premises, &c. Now if the said Jack T. Griffin doth prosecute his said writ of error to effect, and pay and satisfy the judgment which shall be rendered by the

said Supreme Court in said cause, then this obligation to be void; otherwise, to remain in full force and effect.

Given under our hands and seals the day and date above written.

JACK T. GRIFFIN, [SEAL.]
THOMAS P. McCONNELL. [SEAL.]

And on the tenth day of April, in the year 1847, on application of the defendant, Jack T. Griffin, the Clerk of the said Circuit Court issued a writ of error in said cause, returnable to the Supreme Court, held for said State on the first Monday in June, in the year 1847; with which writ a transcript of the record and proceedings aforesaid, was transmitted to the said Supreme Court according to the Act of Assembly in such case made and provided; and on the 14th day of March, in the year 1848, the Clerk of said Circuit Court received and filed in office a certificate in the following words and figures, to wit:—

THE STATE OF ALABAMA:

To the Clerk of the Circuit Court of Tuscaloosa county, greeting:

Whereas, the record and proceedings of said Court in a certain action wherein by said Court at Spring Term, 1847, it was considered that John Doe, *ex dem.* Cassius Stoddard and James L. Murphy, trustees, recover of Jack T. Griffin the following premises, situate in the County of Tuscaloosa: The N. W. ¼ of section 12, containing 160 acres, more or less; part of the W. ½ of the S. W. ¼ of sec. 12, containing 160 acres; N. E. ¼ sec. 11, containing 160 acres; S. E. ¼ of sec. 11, containing 160 acres; S. W. ¼ of Sec. 11, containing 160 acres; part of the E. ½ of the S. E. ¼ of sec. 10, containing 80 acres; S. W. ¼ of the S. E. ¼ of sec. 10, containing 40 acres; S. E. ¼ of the S. E. ¼ of sec. 2, containing 40 acres; half of the S. W. ¼ of the S. E. ¼ of sec. 2, containing 20 acres; the N. E. ¼ of sec. 15, containing 60 acres; the E. ½ of the N. W. ¼ of sec. 14, containing 80 acres; E. ½ of the N. W. ¼ of sec. 14, containing 80 acres: That a writ of possession issue, and that plaintiffs also recover of defendant the sum of ten cents and costs of suit, &c., were brought before our Supreme Court by writ of error issued by the Clerk of said Circuit Court, on the 10th day of April, 1847, on behalf of said Jack T. Griffin, plaintiff in error. Now it is hereby certified, that it was thereupon by our Supreme Court on the 31st day of December, 1847, considered that said judgment of said Circuit Court be affirmed, and that said defendant in error recover against said plaintiff in error, and against Thomas P. McConnell, security for the prosecution of said writ of error, the amount of said judgment of said Circuit Court ten per cent. damages thereon, and interest, and the costs in said cause accruing in said Supreme Court,

and in said Court below. Witness, James B. Wallace, Clerk of said Supreme Court, the 1st day of March, 1848

JAMES B. WALLACE,
Clerk.

And on the 26th day of October, in the year 1848, the Clerk of said Circuit Court issued a writ of possession, which is in the following words and figures, to wit:—

THE STATE OF ALABAMA,
Tuscaloosa County:

To any Sheriff of the State of Alabama, greeting:

We command you, that you do without delay, proceed to place John Doe, *ex dem.* Cassius Stoddard and James L. Murphy, trustees, &c., in peaceable possession of the following premises, situate in the County of Tuscaloosa, and in township twenty-one of range eleven west of the basis meridian of Huntsville, to wit: The northwest quarter of section twelve, containing one hundred and sixty acres, more or less; part of the west half of the southwest quarter of section twelve, containing one hundred and sixty acres, more or less; northeast quarter of section eleven, containing one hundred and sixty acres, more or less; southeast quarter of section eleven, containing one hundred and sixty acres, more or less; southwest quarter of section eleven, containing one hundred and sixty acres, more or less; part of the east half of the southeast quarter of section ten, containing sixty-acres, more or less; southwest quarter of the southeast quarter of section ten, containing forty acres, more or less; southeast quarter of the southeast quarter of section two, containing forty acres, more or less; half of the southwest quarter of the southeast quarter of section two, containing twenty acres, more or less; the northeast quarter of section fifteen, containing sixty acres, more or less; the east half of the northwest quarter of section fourteen, containing eighty acres, more or less; and the east half of the northwest quarter of section fourteen, containing eighty acres, more or less; which said lands were to the said John Doe *ex dem.* Cassius Stoddard and James L. Murphy, trustees, &c., lately in our Circuit Court, adjudged and recovered in a certain suit therein depending, wherein the said John Doe *ex dem.* Cassius Stoddard and James L. Murphy, trustees, &c., was plaintiff, and Jack T. Griffin defendant, as appears to us of record, and that you make due return hereof at the next term of said Court, to be holden in and for said county on the fourth Monday in March next.

Witness, Swan H. Shelton, Clerk of our said Court, at office this the 26th day of October, A. D. 1848.

SWAN H. SHELTON,
Clerk.

Upon which writ of possession the Sheriff of Tuscaloosa County aforesaid made the following endorsement, to wit:—

Rec'd 26th October, 1848. By virtue of this writ, to me directed, I have give full and peaceable possession unto William Cochran, attorney for the within named Cassius Stoddard and James L. Murphy, of the lands and premises within named, as commanded.

JAMES B. ROGERS,
December 16th, 1848. *Sheriff.*

THE STATE OF ALABAMA,
Tuscaloosa County:

I, Swan H. Shelton, Clerk of the Circuit Court for said county, do hereby certify the foregoing to be a full and complete transcript of the record, proceedings, and judgment, and also of the writ of possession, including the Sheriff's return endorsed thereon, in a cause determined at March Term of said Circuit Court, in the year 1847, and affirmed in the Supreme Court of said State on the 31st day of December, in the year 1847, wherein John Doe, *ex dem.* Cassius Stoddard and James L. Murphy, trustees, &c., is plaintiff, and Jack T. Griffin is defendant.

In testimony whereof I have hereunto set my hand, and affixed the seal of office, at office in the City of Tuscaloosa, this the 23d day of May, A. D. 1851.

[SEAL.] SWAN H. SHELTON,
Clerk.

STATE OF ALABAMA:

I, George D. Shortridge, Judge of the Third Judicial Circuit of the State aforesaid, which said circuit embraces the county of Tuscaloosa, hereby certify, that at and on the date of the above certificate, Swan H. Shelton was and is the Clerk of the Circuit Court in and for the said County of Tuscaloosa; that his certificate and attestation are in due form of law, and as such, entitled to full faith and credit.

Given under my hand and seal at Montevallo, this the 20th day of May, Anno Domini 1851.

GEO. D. SHORTRIDGE. [SEAL.]

To the admissibility of this record the defendant objected. 1. Because the judgment was not binding upon the plaintiff, he being in possession of the premises under his deed, executed previous to the execution of the writ in that case. 2. For want of mutuality. These objections were overruled, the record read to the jury, and the defendant excepted.

The plaintiff then offered the following *transcript* of a deed from Robert Oliver to Conrow, Ramsey, & Co., together with the certificates thereto attached.

THE STATE OF ALABAMA,
Tuscaloosa County:

This indenture, made the day of , in the year of our Lord one thousand eight hundred and thirty-eight, between Robert Oliver, of the county of Tuscaloosa, in the State of Alabama, of the first part, and James McCown of the second part. Whereas, by articles of association and copartnership entered into on the 21st day of September, in the year of our Lord one thousand eight hundred and thirty-eight, Alexander McCown, Charles M. Conrow, Benjamin S. Wilson, Guilford R. Wilson, Abel H. White, Robert Oliver, Chapman A. Hester, Baker Hobson, Phrawdius P. Brown, Daniel P. Mann, Ambrose K. Ramsey, John McCain and Benjamin Williams did agree between themselves to form themselves into a copartnership and firm for the purpose of buying and selling all kinds of merchandise, wares, and such other description of real estate and property as the acting partners of the firm might, for the time being, from time to time deem advisable for the interest of the concern, under the following names and firms, to wit; Conrow, Ramsey and Company, in the City of Tuscaloosa; McCown, Hobson, Williams and Company, at Mobile; at the City of New Orleans; and Hester, Wilson, White and Company, in the City of New York. And whereas, by the third article of said association it is provided, that as a basis for the capital of the company, each individual member thereof did agree to execute a deed of trust upon real estate at cash valuation, to a trustee to be appointed by the company, for the full amount of his investment, or share in the concern, and which should be unincumbered, and become pledged for the payment of all debts contracted by the copartnership, and to pay into the concern one per centum upon the amount of his investment, and such other further cash payments as might become essential, in order to pay the debt, or provide for the engagements of the company. And whereas, by the voice and determination of the said several parties to the said articles, the said James McCown, *James McCown* has been selected for, and has consented to serve as the trustee under, and for the purpose of said third article aforesaid. Now this indenture witnesseth, that for and in consideration of the premises and of the terms and conditions of the above recited article of copartnership, and in further consideration of the benefits, privileges, and emoluments, gains, and profits accruing, and secured to him under the said articles of copartnership as aforesaid, the particulars whereof will more fully and at large appear by reference thereto now on file, and of record in the office of the Clerk of the County Court of Tuscaloosa County; and in further consideration of the sum of dollars to the said party of the first part paid by the said James McCown, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged by the said party of the first part; hath granted, bargained, sold, aliened, released, and confirmed; and by these presents doth grant,

bargain, sell, alien, release, and confirm unto the said James McCown and his heirs and assigns, all and singular that parcel of land, viz: Beginning at the northeast of section eleven, running thence south to the southeast corner: thence to the half mile stake in section fourteen: thence west four hundred and eighty poles to the southwest corner of the northeast quarter of section fifteen: thence north two hundred and forty poles to the northwest corner of forty, entered by R. O.: thence east eighty poles to a stake: thence north eighty poles to Caddel's Creek: thence down the meanders of said creek to the line where it crosses said creek, between section two and eleven: thence north to the half mile stake: thence east one hundred and sixty poles to a stake: thence north two hundred poles to a stake: thence east eighty poles to a stake; thence north forty poles to a corner: thence east eighty poles to a stake in section line: thence south eighty poles to the beginning: thence east one hundred and sixty poles to the half mile stake: thence south one hundred and sixty poles; thence west one hundred and ten poles; thence south one hundred and sixty poles to a stake: thence west fifty poles to the southeast corner of section eleven; also forty acres lying south of said land, and between Big Creek and Big Cypress Swamp, containing thirteen hundred and seventy acres, more or less, together with all and singular the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the right, title, estate, property, interest, claim, and demand whatsoever, both in law and in equity, howsoever, of him the said party of the first part, of, in, and to the same, with the appurtenances. To have and to hold the same, with the appurtenances, and every part and parcel thereof, with the appurtenances, unto the said James McCown, his heirs and assigns, forever. In trust, nevertheless, and to and for the use and purposes hereinafter mentioned; that is to say, that the said lands, tenements, and appurtenances shall be held by the said James McCown in trust for the payment of all and singular the debts contracted by the said copartners aforesaid, and be liable for the same, as provided for in said articles of copartnership aforesaid in manner following: that is to say, Conrow, Ramsey & Co. It is covenanted and declared by and between the said parties to these presents, that in the event of the debts contracted by the aforesaid copartnership, or either of them becoming due, or any or either of the liabilities of said firm or firms, or either of them remaining due and unpaid, and there shall not be sufficient funds of said copartnership to pay off and discharge the same; then, and in that event, it shall be and is hereby declared to be lawful for the said James McCown, at the request of any of the creditors or creditor of said Company, or of the acting partners thereof, to take into his possession the before granted real estate, or any part thereof, and the same to sell for cash at public vendue, giving six months' notice thereof by advertisement in some public newspaper published in the town of Tuscaloosa, and the proceeds thereof to pay over and disburse towards the payment of the

said debts and liabilities of said copartnership and Company, according as in his discretion may be just to all parties concerned, and in conformity with the true intent and meaning of said articles aforesaid. And it is hereby covenanted, declared, and agreed by and between the said parties to these presents, that if upon the call of the acting partners of the said firm or copartnership, the said Conrow, Ramsey & Co. shall fail, neglect, or refuse, for the space of twenty days, to provide and pay such cash payments as may and shall become necessary to pay the debts or provide for the engagements of said Company, then and in that event, the said James McCann shall, at the request of the said acting parties of each firm, proceed to sell and expose to sale for cash, at public vendue, by notice in some newspaper as aforesaid, all and singular the said estate and property herein conveyed, or any part thereof, and out of the proceeds thereof to be retained in his hands to pay over to the said acting partners of said firm and company, or to such persons as they may appoint, all and singular such amounts of cash payment as may from time to time be required to pay the debts or provide for the engagements of said Company, agreeable to the aforesaid articles of copartnership, and the balance and remainder thereof to retain until all the debts and liabilities of said firm are discharged, or the said proceeds exhausted. And it is hereby declared to be the true intent and meaning of these presents, that the said trust, hereby created, shall not be considered at an end and discharged by a partial sale of said estate hereby convey, or a partial appropriation of the proceeds of such sale; but that the same shall continue until the liabilities and debts of said Company are fully discharged, or the said estate, or the proceeds thereof, fully and entirely exhausted in the manner aforesaid. And it is agreed that the said trustee may cause the trust estate aforesaid, or any part thereof, to be insured at his discretion, and deduct the premium of such insurance. And it is agreed that the said trustee shall not be chargeable for any more than what he shall actually receive by virtue of these presents, nor accountable for any losses that happen in the management or disposal of said trust estate without his wilful default or neglect; and the said party of the first part covenants that he has not heretofore assigned, incumbered, received, or discharged all or any part of the premises hereby assigned in trust; and that he will not do or suffer any act to hinder or obstruct the said trustee from recovering or receiving the same, or any part thereof, or such satisfaction as may be had for the same. And the said party of the first part covenants, at the request and at the cost of the said trustee, to perform and execute all reasonable acts necessary to the performance of the said trusts, and for the further and better assuring, granting, and conveying of the premises hereinbefore mentioned or intended to be granted and conveyed in trust, and for enabling the said trustee to collect, recover, and receive the same, and any and every part thereof. And in case the said James McCown, trustee as aforesaid, shall happen to die possessed of the said trust estate,

or money arising from the sale of the same as aforesaid, it is agreed that the said copartners, or the major number of them, shall appoint another person to be trustee in the place of the said James McCown, in writing under their hands; upon such appointment and reasonable notice thereof, unto the executors or administrators of *of* the said James McCown, they shall deliver, assign, and convey all and singular the trust estate and premises unto such new trustee, subject to the trusts hereinbefore declared, and to such covenants, conditions, and agreements as shall be agreed upon between the said copartners, or the major number of them, and the said other trustee so appointed as aforesaid. And the said James McCown, for himself, his heirs, executors, and administrators, covenants and agrees with the said party of the first part, his executors and administrators, and with the said copartners severally, that he will faithfully execute all the trusts herein and hereby reposed in him; and will, at the request of the said copartners, or the major part of them, account with them in writing touching the said trusts, and will make a just return of all trust moneys which he shall receive after the deduction above provided for to the said according to the true intent of this indenture.

ROBERT OLIVER. [SEAL.]

Test:
CASSIUS STODDARD.

THE STATE OF ALABAMA,
Tuscaloosa County:

Personally appeared before me, Moses McGuire, Clerk of the County Court for said County, Cassius Stoddard, a subscribing witness to the foregoing deed of trust, who, being duly sworn, saith that he saw Robert Oliver sign, seal, and deliver the same, on the day and year therein mentioned, to the aforesaid James McCown, and that he, this deponent, signed his name, as a witness, in presence of the said Robert Oliver.

Given under my hand and seal, this 8th day of December, 1838.

[SEAL.] MOSES McGUIRE,
Clerk.

Filed for registration the 8th day of December, 1838, and on the same day and year recorded in Book O, pages 480, 482, and 483.

MOSES McGUIRE,
Clerk.

THE STATE OF ALABAMA,
Tuscaloosa County:

I, Moses McGuire, Clerk of the Court of Probates for said County, hereby certify that the foregoing sheets, containing seven pages, contain a true and full transcript, from the records of my office, of a deed

of trust or assignment, made by Robert Oliver to James McCown, for the purposes therein specified.

In testimony whereof, I have hereunto set my hand, and seal of the Court of Probates, this 29th of September, 1852.

[SEAL.] MOSES McGUIRE,
Clerk Court of Probates.

THE STATE OF ALABAMA,
Tuscaloosa County:

I, Moses McGuire, Judge of Probates for said County, hereby certify that Moses McGuire, whose certificate appears within, is and was at the time of signing the same, Clerk of the Court of Probates for said County, and keeper of the records of said Court, duly commissioned and sworn, and that said certificate is in due form of law.

Given under my hand and seal, the 29th day of September, A. D. 1852.

[SEAL.] MOSES McGUIRE,
Judge of Probates.

THE STATE OF ALABAMA,
Tuscaloosa County:

I, Moses McGuire, Clerk of the Court of Probates for said County, hereby certify that Moses McGuire, whose genuine signature appears above, is and was, at the time of signing his name thereto, Judge of Probates for said County, duly commissioned and sworn.

In testimony whereof, I have hereunto set my hand and seal of office, this 29th day of September, A. D. 1852.

[SEAL.] MOSES McGUIRE,
Clerk of the Court of Probates.

To the introduction of which the defendant objected, because the plaintiff had not accounted for the absence of the original. The objection was overruled, the said copy read to the jury, and the defendant excepted.

(*Defendant's Evidence.*)

The defendant then offered the following deposition of John Patterson, Swan H. Skelton, Joel Shirley, William Thompson, and Chelsea Cook, John M. Connell, James L. Murphy, Dennis Dent, A. N. Thompson.

DISTRICT COURT OF THE UNITED STATES,
in and for the Northern District of the State of Mississippi, at Pontotoc:

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN. } Middle District of Alabama, ss:

Jack T. Griffin, of the county of Chickasaw, State of Mississippi, being sworn, says, that he is the defendant in the above stated cause; that he is advised by his counsel, and verily believes that the testimony of Swan H. Skelton, John Pattison, Dennis Springer, Joel Shirley, and Chelsea M. Cook , at present of the county of Tuscaloosa, State of Alabama, is material and necessary for this deponent, in the defence of such cause; that the said Swan H. Skelton, John Pattison, Dennis Springer, Joel Shirley, and Chelsea M. Cook, live in the county of Tuscaloosa, State of Alabama, more than one hundred miles from Pontotoc, where the Court at which this deponent expects the said cause will be tried, is appointed by law to be held. And this deponent further says, and believes, James S. Reynolds, the above-named plaintiff, resides in County, State of Alabama, the place where the examination of the said witnesses is expected to be taken; and that he is informed, and believes, Peck & Van Hoosé, the attorneys of the said James S. Reynolds, reside at the same place, as aforesaid.

JACK T. GRIFFIN.

DISTRICT COURT OF THE UNITED STATES,
in and for the Northern District of the State of Mississippi, at Pontotoc:

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN }

Let Swan H. Skelton, John Pattison, Dennis Springer, Joel Shirley, and Chelsea M. Cook, the witnesses named in the above affidavit, be examined *de bene esse* before me accordingly, at my office in the city of Tuscaloosa, on Tuesday, the 25th day of May, 1852, between the hours of nine o'clock A. M. and five o'clock P. M., as witnesses for the above defendant, and let one day's notice be given to the said defendant.

Be it remembered that, on the 22d day of May, 1852, at my office, Jack T. Griffin personally appeared before me, Jo. C. Guild, Mayor of the city of Tuscaloosa, and made oath that he, the said Jack T. Griffin, was defendant in a suit then depending in the District Court of the United States, in and for the Northern District of the State of Mississippi, at Pontotoc, wherein James S. Reynolds was plaintiff; that the testimony of Swan H. Skelton, John Pattison,

Dennis Springer, Joel Shirley, and Chelsea M. Cook was material and necessary for him, the said defendant, in the defence of such suit; and that they, the said Swan H. Skelton, John Pattison, Dennis Springer, Joel Shirley, and Chelsea M. Cook lived in Tuscaloosa County, State of Alabama, more than one hundred miles from Pontotoc, where the Court at which he, the said defendant, expected the cause would be tried, was appointed by law to be held; that the said James Reynolds, the above-named plaintiff, resided in Tuscaloosa County, State of Alabama, and that Peck and Van Hoose, his attorneys, resided also at Tuscaloosa, aforesaid. And the said Jack T. Griffin requested me that the said Swan H. Skelton, John Pattison, Dennis Springer, Joel Shirley, and Chelsea M. Cook might be examined, according to the act of Congress in such case made and provided. Whereupon I ordered that the said Swan H. Skelton, John Pattison, Dennis Springer, Joel Shirley, and Chelsea M. Cook should be examined *de bene esse* before me, at my office, in the city of Tuscaloosa, on Tuesday, the 25th day of May, 1852, between the hours of nine o'clock A. M. and five o'clock P. M., and that one days' notice should be given to the said James S. Reynolds, or Peck and Van Hoose, his attorneys, of such examination, to the end that they might, if they should see fit, be present at the examination and put interrogatories; and I having satisfactory proof that such notice had been given, and as well the said Jack T. Griffin as the said James S. Reynolds appearing before me, at my office, on this, the 25th day of May, 1852, I have therefore proceeded with the said examination.

And the said John Pattison, the first witness, being carefully examined, and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith in reply to the

1*st Int.* Are you acquainted with the parties to this suit? That he is so acquainted.

2*d Int.* Are you acquainted with the plantation sold by Jack T. Griffin to James S. Reynolds and wife? In what neighborhood does it lie? Witness says he is acquainted with the plantation just mentioned; it lies on Big Creek, about five miles west of North Point, in Tuscaloosa County.

3*d Int.* Do you know whether Reynolds took possession of said plantation after the said purchase? has he abandoned the possession of said plantation? if so, at what time did he abandon it?

Witness says Reynolds moved down and took possession of said plantation; he abandoned the possession of the plantation in the early part of the year 1848.

4*th Int.* Is the tract of land of equal value? and what is its general character as to fertility? is there or is there not a great difference in different portions of it in this respect?

Witness says he thinks the tract is not of equal value; some of it is very good land, and some of it is very poor land.

5*th Int.* Were you present at the trial of Doe *ex dem.* Stoddard

and Murphy *vs.* Jack T. Griffin, in the Circuit Court of Tuscaloosa County?

Witness says he was present at the trial.

6*th Int.* Did, or did not James S. Reynolds testify against the defendant Griffin in that case?

Witness says it is his impression he did.

7*th Int.* If in answer to 3d int. you say Reynolds has abandoned the land sold him and wife by Griffin, say who has been in possession of it since?

Witness says he thinks George Sutton lived on the land two years; he rented the land one year from William Cochrane; William Cochrane has been in possession of it since.

8*th Int.* How came you to be present at the trial of Doe *ex dem.* Stoddard and Murphy *vs.* Jack T. Griffin?

Witness answers and says he was a witness in this case, and a juryman at that term of the Court.

Cross-examined by Pl'ff's Counsel.

1*st Cross-Int.* Who did Griffin buy the said plantation of?

Witness says he thinks Griffin bought it of the Sheriff of Tuscaloosa Co., at the Sheriff's sale.

2*d Cross-Int.* Who was the Sheriff that sold it?

Witness thinks the Sheriff was Wm. Braly.

3*d Cross-Int.* When was said sale made?

Witness does not recollect when said sale was, but thinks it was in the year 1841 or 1842.

4*th Cross-Int.* How long did said Griffin own the said plantation?

Witness says he is not able to say.

5*th Cross-Int.* Did he live on and cultivate the said plantation—if so, how long?

Witness says Griffin lived on said plantation and cultivated it, but does not know how long.

6*th Cross-Int.* As whose property was said plantation sold at Sheriff's sale?

Witness says the plantation was sold as the property of Robert Oliver, the old man, to the best of his impression.

7*th Cross-Int.* What was the price given by said Griffin at said sale?

Witness does not recollect the price.

8*th Cross-Int.* How many acres did said plantation contain?

Witness says he does not recollect how many acres were in said plantation.

9*th Cross-Int.* How many acres, as near as you know, were cleared and cultivated?

Witness says he does not know how many acres were cleared and cultivated.

10*th Cross-Int.* How many crops did said Reynolds raise on said plantation?

Witness says he isn't positive, but thinks Reynolds raised two crops on said plantation.

11*th Cross-Int.* What do you mean when you say that Reynolds abandoned the said plantation in the early part of the year 1848? do you mean that he moved his family off, or that he did not cultivate it after that time?

Witness says that he means that Reynolds moved to North Port and kept tavern.

12*th Cross-Int.* Did not said Reynolds raise a crop on the said plantation in the year 1848?

Witness says his impression is that Reynolds attended a part of Joseph Noble's plantation adjoining North Port, in the year 1848.

13*th Cross-Int.* Can you say that it was in 1848 or in 1849 that Reynolds cultivated a part of Joseph Noble's plantation adjoining North Port?

Witness says he thinks Reynolds attended Noble's plantation both the years 1848 and 1849.

14*th Cross-Int.* Did he cultivate the Noble plantation before or after the death *or after the death* of said Noble?

Witness thinks it was after the death of said Noble.

15*th Cross-Int.* Who did Reynolds rent the said plantation of?

Witness thinks he rented it of Martin Richards, the administrator of said Noble.

16*th Cross-Int.* Do you know Asa Booth, of this county—if so, where did he live in 1848?

Witness says he knows Asa Booth, but is not able to say where he lived in 1848, tho' he knows he lived with Mr. Reynolds a short time.

17*th Cross-Int.* Who cultivated the said plantation in the year 1848?

Witness says his impression is Henry Hyche, George Sutton, and William Sutton cultivated said plantation in that year, and George Sutton lived in the houses.

18*th Cross-Int.* Did Griffin sell the whole of said plantation to said Reynolds and wife?

Witness says he doesn't know.

19*th Cross-Int.* Were you examined as a witness in the case of Doe *ex dem.* Stoddard and Murphy *vs.* Jack T. Griffin?

Witness says he was examined as a witness in the above case, on account of his having built a house for Griffin on the premises.

20*th Cross-Int.* For which of the parties were you examined?

Witness says he was examined by both parties, and that he was the witness of Griffin.

21*st Cross-Int.* If you can, state the evidence given by Reynolds, or any part of it?

Witness says, to the best of his recollection Reynolds was questioned as to the value of the land, or the value of the rent of the

land, or if he thought there was any fraud in the deed that was made by Oliver to secure Conrow, Ramsey, & Co., commonly known as the Muggins Co.

22*d Cross-Int.* Do you remember by what attorney or attorneys Reynolds was examined?

Witness says he was examined by the attorneys of both parties; Martin and Huntington for Griffin, and Wallace and Cochrane for the plaintiffs.

23*d Cross-Int.* Were you present during the entire trial?

Witness says he doesn't recollect.

24*th Cross-Int.* Was the trial had at the spring or fall term of the Court?

Witness does'nt recollect the term.

25*th Cross-Int.* Who was the Judge that presided at the trial?

Witness says he doesn't recollect (he, witness and Reynolds were talking about it last spring, &c.); he thinks it was Judge Jno. D. Phelan.

And further this deponent saith not.

JOHN PATTERSON.

And the said Swan H. Skelton, the second witness, being examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith, in reply to the

1*st Int.* Are you acquainted with the parties to this suit?

Witness says he is acquainted with the parties.

2*d Int.* Do you know of a suit entitled Doe *ex dem.* Stoddard and Murphy *vs.* Jack F. Griffin?

Witness says he knows of such a suit.

3*d Int.* Were you the Clerk of the Circuit Court of Tuscaloosa County from the beginning to the final judgment of said cause?

Witness says he was clerk from August, 1843, till the final judgment, and until August, 1851.

4*th Int.* Was James S. Reynolds a witness in said cause, and on which side of said cause was he subpœnaed?

Witness says he was subpœnaed as a witness at the instance of the plaintiff, at three several terms of said Court, to wit: at the fall term of 1846, and at the special November term in 1846, and at the March term, 1847; and that the said Reynolds proved his attendance as a witness in said cause for the plaintiff at the September term, 1846, and obtained a certificate for the sum of five dollars and fifteen cents; and also at the March term, 1847, the trial term of said cause, he obtained a certificate of attendance as a witness in said cause, for the sum of five dollars and twenty-five cents; which information he, witness, derives from the files of the Circuit Court of Tuscaloosa County, as kept by him while he was clerk of said Court.

5*th Int.* Did you receive from the defendant Griffin, or any other person for him, the costs of witnesses and the Court costs and dam-

ages in said case? and if you have any written evidence of the fact, append it to your deposition.

Witness says he received from Thomas P. McConnell, who was the security on the writ of error bond, the sum of one hundred and twenty-seven $\frac{90}{100}$ dollars, being the amount of damages and costs in the said cause, and gave him a receipt for the same, dated the 24th March, 1848, which said receipt is hereto attached, and marked Exhibit "A."

Cross-examined by Plff's Counsel.

1*st Cross-Int.* Was the said Reynolds examined as a witness in the trial of said cause?

Witness says he doesn't remember.

SWAN H. SKELTON.

And the said Joel Shirley, the third witness, being examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:—

1*st Int.* Are you acquainted with the parties to this suit? That he is acquainted with the parties.

2*nd Int.* Do you know the plantation sold by deft. to plffs? Where does it lie?

Witness says he knows the plantation—that it lies out about 5½ miles from North Port, on the Columbus road.

3*d Int.* At what time did Reynolds remove from said plantation into the tavern at North Port?

Witness says he (plff.) moved into the tavern on the 28th December, 1847. Witness was in possession of the tavern until Reynolds moved in. There was an agreement between witness and plff. that he, witness, was to move out, and plff. to come in the same day. The agreement between witness and plff. to the above effect is the means by which remembers the date so accurately.

4*th Int.* Do you know whether Reynolds ever moved back to the plantation after *after* the removal of himself and family to North Port?

Witness says he doesn't think he ever moved back to the plantation.

Cross-examined by Plff's Counsel.

1*st Cross-Int.* Are you sure that you are correct in mentioning the time of Reynolds' moving into the tavern?

Witness says he is sure of it.

2*d Cross-Int.* Did Reynolds remove all his negroes from the plantation into town, where he and family moved?

Witness says he doesn't know anything about it.

3*d Cross-Int.* Do you know whether Reynolds had anything more to do with the plantation after 1847?

Witness says he thinks Reynolds had something to do with the

plantation afterwards, but is not positive. After witness left the tavern in North Port, he went near the plantation, and saw Mr. Booth at work, and some negroes at the gin house on the side of the road; witness took them to be the negroes of the estate of the Stone children.

4th Cross-Int. Was it not reputed in the neighborhood that Reynolds married the widow of Stone?

Witness says it was so reputed.

Direct Examination.

1st Int. Do you know, of your own knowledge, that Reynolds ever owned any negro or negroes, at any time, in his own right?

Witness says he doesn't know that Reynolds ever owned a negro.

JOEL SHIRLEY.

And the said Chelsea M. Cook, the fourth witness, being examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:—

That he is acquainted with the parties to this suit. That he is Register of the 22d Chancery District, of the State of Alabama, at Tuscaloosa. That there is such a case as Samuel Reese *vs.* Conrow, Ramsey & Co., which is still on the trial docket in his Court. James L. Murphy was appointed trustee in such case, and he, witness, has seen no account of his resignation. A decree has been rendered in this case, which is hereto attached, marked exhibit C. There is a report of James L. Murphy, trustee, in regard to a sale of some lands, which is hereto appended, marked exhibit B. Embodied in the original report is a printed advertisement of the sale of certain lands: the whole of which is incorporated in the copy which is herewith attached.

There is a report from William H. Martin, witness' immediate predecessor, in regard to the sale of said lands as sold by the trustee, a copy of which is hereto appended, marked exhibit D. To each of which exhibits witness has affixed his official certificate. That he has made diligent search for the agreement referred to in the report of the former register, W. H. Martin, and has not been able to find it.

Upon the execution docket, kept by Robert T. Clyde, a former Register, is the following entry: "Costs taxed up to July Term, 1848, $151 12½." In a fee book, kept by his immediate predecessor, W. H. Martin, the costs are put down at $181 81, at the foot of which is a memorandum, in these words: "Taken William Cochran's note for the above costs"—memorandum without date. Witness has been unable to find any evidence from the files of his office, that any part of the purchase-money has been paid. And the only evidence that the costs have been paid, is found in the memorandum —which memorandum, according to the best of witness' knowledge and belief, is in the handwriting of W. H. Martin.

Cross-examination.

1*st Cross-Int.* Do the exhibits attached to your evidence make up the entire record of said case of Samuel Reese *vs.* Conrow, Ramsey & Co.?

Witness says they do not.

2*nd Cross-Int.* What portions of said record are not embraced in said exhibit?

Witness says he knows the bill is among the papers, and he thinks the answer is also.

3*d Cross-Int.* Is there any decree upon the merits of said cause in your office, or is there any evidence of it?

Witness says he hasn't examined the papers with reference to the finding of a decree upon the merits. In his examination of the papers for a different purpose, witness hasn't seen a decree upon the merits.

4*th Cross-Int.* At whose instance did you examine said papers and record?

Witness says he made the examination at the instance of the defendant.

5*th Cross-Int.* Has there any final decree been rendered in said cause, or is it still pending in your Court?

Witness says the cause is now upon the trial docket, and he, witness, doesn't know whether there has been a final decree rendered or not.

Direct examination.

Witness says he has been register about a month. Further says he has not made himself familiar with the papers in his office, except in cases where application has been made for an examination of the papers. Witness says there has been no complete record made in the case of Sam'l Reese *vs.* Conrow, Ramsey & Co. The exhibits above mentioned would constitute a part of the complete record if it were made out.

CHELSEA M. COOK.

And I, Jo. C. Guild, Mayor of Tuscaloosa, as aforesaid, do further certify that the preceding depositions were reduced to writing by me, and signed by the said John Patterson, the said Swan H. Skelton, the said Joel S. Shirley, the said Chelsea M. Cook, and the said William Thompson, and that the exhibits referred to by the said Swan H. Skelton, marked exhibit A, is the one hereto appended, and that the exhibits referred to by the said Chelsea M. Cook, marked exhibits B, C and D, are the exhibits hereto appended.

And I further certify, that the defendant declined to examine one witness, Dennis Springer, whose name appears in the above affidavit, on account of sickness of the witness.

And I further certify that I am not of counsel or attorney for

either of the parties to this suit, nor am I interested in the event thereof. I further certify that the erasures, interlineations, &c. in the above deposition were made by me while taking the same.

In testimony whereof, I have hereunto set my hand and affixed the seal of the City of Tuscaloosa, this 29th day of May, A. D. 1852.

[SEAL.] JO. C. GUILD,
Mayor of the City of Tuscaloosa.

Commissioners' fees, $15 00, paid by J. T. Griffin.

Costs of the witnesses John Patterson, Joel Shirley, Chelsea M. Cook and Wm. Thompson, of $1 50 each, paid by Griffin: also, C. M. Cook's fees as Register, of $5 26.

Exhibit A.

IN THE CIRCUIT COURT,
Tuscaloosa County, Ala:

JOHN DOE *ex dem.* CASSIUS M. STODDARD AND JAMES L. MURPHY, Trustees, &c.,
vs.
JACK T. GRIFFIN.

Damages	$00 10
Clerk's fees	40 00
County tax	2 00
Att'ys Wallace & Cochran . .	20 00
Sh'ff Cribbs	5 75
" McGuire	9 25
Witness Collin Finnell . .	23 30
" James S. Reynolds . .	10 40
" John Patterson . .	14 10
" Charles G. Pilcher . .	1 50
" L. B. Neal . . .	1 50
	$127 90

Received of Thomas P. McConnell, one hundred and twenty-seven dollars and ninety cents, in full of the above damages and costs, this 24th day of March, 1848.

SWAN H. SKELTON,
Clerk.

Exhibit B.

In pursuance of the decree of the Court of Chancery at Tuscaloosa, referred to in the printed advertisement hereto annexed, and which is a part of this agreement, I did, on the first Monday in February, to wit: the fourth day of February in the year 1850, at

the Court-House in the City of Tuscaloosa, at the hour of sales made by the Sheriff of the County, sell at public auction the lands set forth and described in said advertisement, to William Cochrane, of Tuscaloosa, for the sum of two thousand dollars, that being the highest and best bid therefor, and a fair and full price therefor, upon the terms following:—

The said purchaser is, from said sum, to pay the costs of said Chancery suit up to and including the confirmation of this sale, and the deed thereupon; also the expense of advertising the said land, and the commissions to be allowed me as trustee upon the sale; also the execution against me as trustee, and heretofore levied upon said land, in a case in the Circuit Court of Tuscaloosa, wherein I, as trustee, was plaintiff, and *Haley* was defendant; also the taxes upon said land, and such other costs and charges as to the Court may seem reasonable and proper, and the balance of the said sum of two thousand dollars upon the delivery of the deed to him, and the ratification of the sale.

In testimony whereof, I have hereto set my hand and seal at the City of Tuscaloosa, this fourth day of February, 1850.

JAS. L. MURPHY. [SEAL.]

IN CHANCERY,
Tuscaloosa County:

SAMUEL REESE AND OTHERS
vs.
JAMES MCCOWN AND OTHERS.

By virtue of a decree of the Court of Chancery, will be sold at the Court-House door in the City of Tuscaloosa, on the first Monday in February next, the following lands, all in township No. twenty-one, of range No. eleven west, in the County of Tuscaloosa, viz:—

The northwest quarter of No. twelve.

The west part of the west half of the southwest quarter of section No. twelve, containing about fifty acres.

The northeast quarter of section No. eleven.

The southeast quarter of section No. eleven.

The southwest quarter of section No. eleven.

The south part of the east half of the southeast quarter of section No. ten, containing about sixty acres.

The southwest quarter of the southeast quarter of section No. ten.

The southeast quarter of the southeast quarter of section No. two.

The south half of the southwest quarter of the southeast quarter of section No. two, containing about twenty acres.

The northeast quarter of section No. fifteen.

The east half of the northeast quarter of section No. fourteen.

The east half of the northwest quarter of section No. fourteen.

In all, about eleven hundred and seventy acres.

Terms of sale—such sum in cash as may be sufficient to pay the

costs and expenses incurred, and which will be made known at the sale. The balance to be secured by note, payable on the delivery of the deed, which will probably be in July next, after the next Chancery Court.

In case of the death of the undersigned, the sale will be made by the Register in Chancery at Tuscaloosa.

JAMES L. MURPHY,
Trustee, &c.

TUSCALOOSA, *July 30th*, 1849.

Filed in office 1st July, 1850.

W. H. MARTIN,
Register.

Office of the Register in Chancery of the 22d Chancery District of the Middle Chancery Division of the State of Alabama, at the City of Tuscaloosa, in said State.

I, Chelsea M. Cook, Register in Chancery, of the 22d Chancery District of the Middle Chancery Division of said State, do hereby certify that the above is a true copy of the original report of James L. Murphy, Trustee, on file in my office.

Witness my hand and private seal, there being no seal office, this 28th day of May, 1852.

CHELSEA M. COOK, [SEAL.]
Register in Chancery.

Register's Fees.

Copy		96
Certificate		50
Attendance as witness . .	1	50
	2	96

Received, Tuscaloosa, 29th May, 1852, of Jack T. Griffin, Esq., six dollars and 76 cents, the amount of my fees as Register.

C. M. COOK,
Register in Chancery.

Exhibit D.

SAMUEL REESE
vs.
CONROW RAMSEY & Co.

Register's Office of the 22d Chancery District of the Middle Chancery Division of the State of Alabama:

To the Honorable Wilie W. Mason, Chancellor of the Middle Chancery Division of the State of Alabama:—

In the presence of, and by the direction of a decree rendered in this cause on the 8th day of July, 1848, the undersigned, Register, &c., begs leave to submit the following report:—

On the 4th day of February, 1850, James L. Murphy, the Trustee appointed in this cause, proceeded to sell the lands, according to the direction and description of the same as contained in the aforesaid decree, at public vendue at the Court-house in the City of Tuscaloosa. That William Cochran having bid two thousand dollars, and that being the highest made, he thereby became the purchaser, and having paid to the undersigned the amt. of the costs in the case, he executed his agreement to pay the balance on the confimation of the sale by this Court, which agreement is herewith submitted.

W. H. MARTIN,
Register, &c.

Filed in office 1st July, 1850.

W. H. MARTIN,
Register.

Office of the Register in Chancery of the 22d Chancery District of the Middle Chancery Division of the State of Alabama, at the City of Tuscaloosa, in said State.

I, Chelsea M. Cook, Register in Chancery of the 22d Chancery District of the Middle Chancery Division of said State, do hereby certify that the above is a true copy of the original report of W. H. Martin, Register, on file in my office.

Witness my hand and private seal, there being no seal of office, this 28th day of May, A. D. 1852.

[SEAL.] CHELSEA M. COOK,
Register in Chancery.

Exhibit D.

Register's Fees.

Copy	40
Certificate . . .	50
	90

In the Court of Chancery, at Tuscaloosa.

SAMUEL REESE
vs.
JAMES MCCOWN *et al.*

The report of the Register of this Court, and the report of James S. Murphy, the Trustee in this case, in respect to the sale of the lands heretofore decreed to be sold, having been respectively read according to the practice of this Court, and no objection being made, and the same being satisfactory to the Court—

It is ordered that the same be confirmed. It is further ordered that the Register of this Court make and execute to the purchaser a deed and conveyance for the said lands decreed to be and advertised and sold, and that the purchaser, from the purchase-money, pay the costs of the deed.

It is further ordered that the balance of the purchase-money, after the disbursements, be paid to the Solicitor for the complainants, and that all further order be reserved, and that this cause be continued.

WYLIE W. MASON,
July 3d, 1850. *Chancellor.*

Office of the Register in Chancery of the 22d Chancery District of the Middle Chancery Division of the State of Alabama, at the City of Tuscaloosa, in said State.

I, Chelsea M. Cook, Register in Chancery of the 22d Chancery District of the Middle Chancery Division of said State, do hereby certify that the above is a true copy of the original decree of Wylie W. Mason, Chancellor, on file in my office.

Witness my hand and private seal, there being no seal of office, this 28th day of May, A. D. 1852.

[SEAL.] CHELSEA M. COOK,
Register in Chancery.

Exhibit E.

Register's Fees.

Examination of Records . .	$2 00
Copy	40
Certificate	50
	$2 90

District Court of the United States, in and for the Northern District of the State of Mississippi, at Pontotoc.

MIDDLE DISTRICT OF ALABAMA, ss :

To any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon Swan H. Skelton, if to be found in your County, to be and personally appear before me, at my office in the City of Tuscaloosa, on Tuesday, the 25th day of May, 1852, between the hours of nine o'clock A. M. and five o'clock P. M., and the whole truth and nothing but the truth to speak in behalf of the defendant in a certain suit, now depending in the District Court of the United States in and for the Northern District of the State of Mississippi, at Pontotoc, wherein James S. Reynolds is plaintiff and Jack T. Griffin is defendant; and have you then and there this writ.

Given under my hand and seal, this the 24th day of May, A. D. 1852. [SEAL.] JO. C. GUILD,
Mayor of Tuscaloosa.

Rec'd 24th May, 1852, executed same day rec'd; by serving Swan H. Skelton with a copy of the within.

D. J. J. W. FULTON,
Sheriff.

By MORRIS ROBERTS,
D. S.

Sheriff's Fees $1 50 This amt. paid by Jack T. Griffin.

D. J. J. W. FULTON,
Sheriff.

By R. W. YEATE,
D. S.

District Court of the United States in and for the Northern District of the State of Mississippi, at Pontotoc.

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN & WIFE.

MIDDLE DISTRICT OF ALABAMA, ss:

Jack T. Griffin, of Houston, Chickasaw County, State of Mississippi, being sworn, says he is one of the defendants in the above entitled cause: that he is advised by his counsel, and verily believes that the testimony of William Thompson, of Tuscaloosa County, State of Alabama, is material and necessary for this deponent in the prosecution of such cause: that the said William Thompson lives in Tuscaloosa County, State of Alabama, more than one hundred miles from Pontotoc, where the Court at which this deponent expects the cause will be tried is appointed by law to be held. And this deponent further says that as he is informed and believes, James S. Reynolds, the above-named plaintiff, resides in Tuscaloosa County, State aforesaid, the place where the examination of the said witness is expected to be taken: and that as he is also informed and believes, Peck and Van Hoose, the attorneys of the said James S. Reynolds, resides at Tuscaloosa aforesaid.

J. T. GRIFFIN.

DISTRICT COURT OF THE UNITED STATES,
in and for the Northern District of the State of Mississippi, at Pontotoc:

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN & WIFE.

Let William Thompson, the witness named in the above affidavit, be examined, *de bene esse*, before me accordingly, at my office in the

City of Tuscaloosa, State of Alabama, on Saturday, the 26th day of November, 1853, between the hours of nine o'clock A. M. and five o'clock P. M.—day's notice to be given to the said plaintiff of such examination, being waived by said plaintiff.

Be it remembered that, on the twenty day of November, one thousand eight hundred and fifty-three, between the hours of nine o'clock A. M. and five o'clock P. M., Jack T. Griffin personally appeared before me, Jo. C. Guild, Mayor of the City of Tuscaloosa, State aforesaid, and made oath that he, the said Jack T. Griffin, and wife, were defendants in a suit then depending in the District Court of the United States in and for the Northern District of the State of Mississippi, at Pontotoc, wherein James S. Reynolds was plaintiff; that the testimony of William Thompson was material and necessary for him, the said defendant, in the prosecution of such suit, and that he, the said William Thompson, lived in Tuscaloosa County, State of Alabama, more than one hundred miles from Pontotoc, where the Court at which he, the said defendant, expected the said cause would be tried, was appointed by law to be held; that James S. Reynolds, the above named plaintiff, resided in Tuscaloosa County, State of Alabama, more than one hundred miles from Pontotoc aforesaid; and that Peck and Van Hoose, his attorneys, resided at Tuscaloosa, more than one hundred miles from Pontotoc aforesaid. And the said Jack T. Griffin requested me that the said William Thompson might be examined according to the directions of the act of Congress in such case made and provided.

Whereupon I ordered that the said William Thompson should be examined *de bene esse*, before me, at my office, in said City of Tuscaloosa, State aforesaid, and that notice should be given to James S. Reynolds of such examination, to the end that he might, if he should see fit, be present at the examination, and put interrogatories: and I, having satisfactory proof that such notice had been given—and, as well the said Jack T. Griffin as the said James S. Reynolds appearing before me at my office, in the said City of Tuscaloosa, on this, the twenty-sixth day of November, I have therefore proceeded with the said examination.

And the said William Thompson being carefully examined, and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith, in reply to the

1*st Int.* Are you acquainted with the parties to this suit?

That he is acquainted with the parties.

2*d Int.* Were you an acting Justice of the Peace in 1843?

Witness answers, he was at that time, and has been ever since.

3*d Int.* Did you draw a deed from def't to pl'ff for the land formerly known as the Oliver tract? was the same acknowledged before you in your official capacity as Justice of the Peace, and who delivered the deed?

Witness says he did draw such a deed, the same was acknowledged

before him in his official capacity by def't and his wife, to the best of his recollection. Thinks he delivered the deed.

4th Int. Did you draw the notes for the purchase-money of said land? if so, how were they made payable? were they due immediately? if not, at what period?

Witness says he drew the notes—his best recollection is, now, they were made payable in one, two, and three years from the January succeeding the sale.

5th Int. Did any money pass between the parties at the time the deed was made, that you saw or know of?

Witness says it was a credit sale—he saw no cash.

6th Int. Was pl'ff reputed solvent or insolvent at the time the deed was executed?

Witness doesn't know whether pl'ff was embarrassed particularly at that time or not.

7th Int. Did you know of any effects pl'ff had at that time from which money could be made?

Witness says he did not.

Pl'ff objects to the third question and answer, because no notice has been given to produce the alleged deed and acknowledgment, the said acknowledgment being better evidence of the fact before whom it was made than the recollection of the witness. Pl'ff. also objects to the fourth question and answer, so far as they relate to the statements of the witness how the notes were made payable, and whether they were due immediately, and if not, at what period—because no notice has been given to produce the said notes. The said notes being better evidence of the facts how they were made payable, and at what time they were made payable, than the recollection of the witness.

And upon such objections being made, the def't. waived the answers to the said third and fourth questions, and asked the following:—

Do you know of the sale of a tract of land by the deft. to the pltff. at any time previous to the year 1850? If you say you know that such a sale was made, describe the land as well as you can: state where it is situated: who owned the land previous to deft.? where was the sale made? were you present at the consummation thereof? was the sale for cash, or on a credit? and if on a credit, what length of time?

Witness says he knows there was a sale of land by def't to plt'ff about the fall of 1843; he thinks witness says they had made the agreement before they came to him to draw up the writing. The land lies five miles west of North Port, on the Columbus road: witness thinks it contained eleven or twelve half quarter sections; the land had previously belonged to the Olivers; the sale was on a credit; thinks it was on a credit of three years from the January succeeding the sale.

Cross-Examination.

1*st Cross-Int.* In answer to def'ts question, have you spoken from recollection merely, or have you any memoranda by which your recollection has been refreshed?

Witness says he has no memoranda, he speaks from his recollection, having been a witness in the controversy between the same parties about the same land in Pickens County, State of Alabama, where he was a witness for the present plt'ff; witness there saw the deed given for the land.

WILLIAM THOMPSON.

I, the said Jo. C. Guild, Mayor, &c., as aforesaid, do further certify that the preceding deposition was reduced to writing by me on the day and at the place specified in the caption, and signed and approved by the said William Thompson, and that I am not of counsel or attorney for either of the parties to the said suit; nor am I interested in the event thereof. I do further certify that the corrections and interlineations in the said deposition, were made by me while writing the same.

In testimony whereof, I have hereunto set my hand and affixed the seal of the City of Tuscaloosa, this the 26th day of November, A. D. 1853.

[SEAL.] JO. C. GUILD,
Mayor of the City of Tuscaloosa.

Commissioner's fee $2 50, paid by defendant.
Witness' fee $1 50, paid by defendant.

Interrogatories to be propounded to John McConnell, a citizen of the County of Tuscaloosa, State of Alabama, the answers to which, when duly taken, to be read in evidence on behalf of the def't in a certain cause now pending in the United States District Court for the Northern District of Mississippi, at Pontotoc, wherein James S. Reynolds is pl'tff, and Jack T. Griffin and wife are def'ts.

Int. 1*st.* Are you acquainted with the parties to this cause?

Int. 2*d.* Have you ever at any time heard the pl'tff make any admissions in relation to his abandoning possession of the place near the City of Tuscaloosa, which he purchased of def't in 1843? if yea, please state fully all that he said in relation thereto, when, where, and all he said about it.

Int. 3*d.* If you know anything further that will benefit def't, please state it as fully as if specially interrogated.

C. B. BALDWIN,
Def'ts Att'y.

Cross-Interrogatories propounded by the Plaintiff.

1*st.* If in answer to the 11th direct Int. you say you have heard the pl'tff make any admission on the subject, then state fully all he

said, giving the language he used as near as you can; and state when and where it was, and who besides yourself heard them.

11*th*. State anything you may know that may benefit the pl'tff.

E. W. PUT,
Att'y for Pl'tf in taking this testimony.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

I, Robert W. Edmondson, Clerk of the District Court of the United States for said District, certify that the foregoing is a true and correct copy of the interrogatories to be propounded to John McConnell, a witness for defendants in the case of James S. Reynolds *vs.* Jack T. Griffin *et al.*, as the same remains on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Pontotoc, this 12th day of May, A. D. 1851

[SEAL.] R. W. EDMONDSON,
Clerk.

UNITED STATES OF AMERICA,
Northern District of Mississippi, ss:

The President of the United States, to Swan H. Skelton, James Skelton and John Niven, greeting:

Know ye, that trusting in your fidelity and provident circumspection in diligently examining John McConnell, witness on behalf of the defendants in a certain cause now pending in the District Court of the United States for the district aforesaid, wherein James S. Reynolds is plaintiff, and Jack T. Griffin *et al.* are defendants, you are requested at such certain days and places as you shall appoint, to call and cause the said witnesses to come before you, and them diligently examine on oath, and their examination into the District Court aforesaid, you distinctly and plainly set, together with this writ inclosed, with all convenient speed.

Witness the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District
[SEAL.] of Mississippi, at Pontotoc, the first Monday of December, A. D. 1850, and in the 75th year of the Independence of the United States.

Issued the 12th day of May, A. D. 1851.

R. W. EDMONDSON,
Clerk.

Notice and irregularity of commission issuing before notice, waived.

DAVIS & ACKER,
Plff's Attys.

May 14*th*, 1851.

Deposition of witness, produced, sworn, and examined, this 21st day of May, in the year 1851, at the office of the Clerk of the Circuit Court of Tuscaloosa County, Alabama, under and by virtue of a commission issued out of the District Court of the United States for the Northern District of Mississippi, in a certain cause therein depending between James S. Reynolds, plaintiff, and Jack T. Griffin *et al.*, defendants, John McConnell, of the County of Tuscaloosa and State of Alabama, aged 65 years, being duly sworn, answers and deposes as follows:—

To the first interrogatory he says: I am acquainted with the parties.

To the second interrogatory he says: About a year or more since I had a conversation with the plaintiff, in the city of Tuscaloosa, no one being present but himself and the plaintiff, about a suit in the Circuit Court of Tuscaloosa County, between John Doe *ex dem.* Cassius Stoddard and James L. Murphy, trustees, &c., plff., and Jack T. Griffin, defendant; the plaintiff stated that he had yielded the possession of the land in controversy in that suit, to William Cochran, and held possession under him, and had never been dispossessed by the sheriff; this conversation took place some time after the recovery of the judgment in the action of ejectment in favor of Stoddard & Murphy against the said Jack T. Griffin, for the same premises, and had reference to the same land heretofore sold by the said Griffin to the said Reynolds.

To the third interrogatory, he says: He knows nothing more that will benefit the defendants, Jack T. Griffin *et al.*

Cross-Interrogatories.

To the first cross-interrogatory, he says: That he has answered in the second direct interrogatory all that he knows about the case.

To the second cross-interrogatory he says: That he knows nothing more that will benefit the plaintiff.

JOHN McCONNELL.

I, Swan H. Skelton, commissioner as aforesaid, do hereby certify that the preceding deposition was reduced to writing by me, stating clearly every answer made by the witness to the interrogatories and cross-interrogatories of both parties, who were present with their counsel, the said witness being first duly sworn to testify the truth, the whole truth, and nothing but the truth; I further certify, that the deposition was signed by the said John McConnell, in my presence, and that I am not of counsel or attorney for either of the parties to the said suit, or interested in the event thereof.

In witness whereof I have hereunto set my hand, this, the 21st day of May, A. D. 1851.

SWAN H. SKELTON,
Commissioner.

Commissioners' fees, $2 50.

UNITED STATES OF AMERICA,
City of Selma, State of Alabama:

I, Jno. M. Strong, Mayor of said city, did, on this the 27th day of May, A. D. 1853, call and cause to come before me, at my office, in said city, James L. Murphy, a witness of lawful age, and of sound mind, to take his deposition in behalf of the defendants, to be read as evidence in a certain cause now depending in the District Court of the United States for the Northern District at Pontotoc, Mississippi, wherein James S. Reynolds and wife are plaintiffs, and Jack T. Griffin and wife are defendants, who, after being duly sworn on the Holy Evangelists, and by me cautioned to speak the truth, the whole truth, and nothing but the truth in the premises, deposes and says:—

That he has been for the last two years and a half a resident citizen of Travis County, in the State of Texas, and is, at the time of giving this testimony, on a visit to his relations in the City of Selma, in Dallas County, in the State of Alabama. The witness further states, that he is not acquainted with James S. Reynolds and wife, or either of them, plaintiffs in the above named suit, and that he is acquainted with Jack T. Griffin, but does not know his wife. He also states, that he, the said James L. Murphy, together with Cassius Stoddard, by a decree of the Chancery Court of the State of Alabama, exercising chancery jurisdiction in the County of Tuscaloosa, in said State of Alabama, were appointed trustees of Conrow Ramsey & Co., commonly known as the Muggins Co., as the successors of James McCown, the first trustee of said firm, and that he, the said James S. Murphy, has not ever at any time, either in his individual capacity as trustee, nor as co-trustee with the said Cassius Stoddard, authorized, empowered, or in any way or manner directed William Cochran, Esq., formerly a practising lawyer in Tuscaloosa, in Alabama, and now deceased, or any other person or persons, to bring any suit or suits, either at law or in Chancery, for or on behalf of the Trustees of said Company, against Jack T. Griffin, or Jack T. Griffin and wife, for the recovery of a certain tract of land conveyed by Robert Oliver, formerly of Tuscaloosa County, in Alabama, by deed of trust to the said James McCown, former trustee of said Company, as aforesaid. He also states, that neither individually as trustee, nor jointly as co-trustee with the said Stoddard, has he ever authorized, empowered, directed, or requested said William Cochran to demand or to receive into possession said tract of land, or any other tract or parcel of land from the said Griffin; and that if any such suit has been instituted by said Cochran for the recovery of said land, such suit was instituted without his knowledge or consent, and that he had no knowledge of the existence of any suit brought by said Cochran against said Griffin, for the recovery of said tract of land, for and on behalf of said trustee, until within the last few days. JAMES L. MURPHY.

My fee as Commissioner, $5 00.
Jas. L. Murphy as witness, 1 50.

JNO. M. STRONG, *Mayor.*

THE STATE OF ALABAMA,
City of Selma, ss:

I, Jno. M. Strong, Mayor of said city, do hereby certify that not being of counsel or attorney for either party in the foregoing suit, or interested in the event of the cause, that the above deposition of James L. Murphy was taken at the time and place mentioned in the caption, after the defendant had been duly sworn upon the Holy Evangelists, that the foregoing is a true and correct statement of his evidence, reduced to writing by me. That the said deposition was read to him and heard throughout, and by him fully approved, and that he signed his name, in my presence, to said deposition, after the same was reduced to writing by me. That the reasons for taking the foregoing deposition are, that James L. Murphy, the witness, lives at a greater distance than one hundred miles from Pontotoc, the place of the trial of said cause; that no notice or notification was served by me on the adverse parties, their agents or attorneys, for the reason that neither of them were within one hundred miles of the place of the taking this deposition, and the same was not out of my possession until the same was sealed up and directed to Robert W. Edmondson, Clerk of the District Court of the United States for the Northern Division of Mississippi, at Pontotoc.

In testimony whereof, I have hereunto set my hand and caused the corporate seal of said city to be affixed.

Done at office in the city of Selma, Ala., this the 27th day of May, A. D. 1853.

[SEAL.] JNO. M. STRONG,
Mayor.

Attest: James D. Monk, Clerk of the city of Selma, 27th day May, A. D., 1853.

J. D. MONK,
Clerk.

REYNOLDS
vs.
GRIFFIN.

In this case it is agreed that James L. Murphy, whose deposition has been taken, attended the sale of the land in controversy, and received one hundred dollars as commissions.

BALDWIN & PHELAN, & DAVID & MURPHY,
Att'ys for Griffin.

REUBEN DAVIS,
Atto. for Pl'ff.

June 7, 1853.

JAMES S. REYNOLDS & WIFE
vs.
JACK T. GRIFFIN & WIFE.

In the District Court of the United States for the Northern District of Mississippi, at Pontotoc.

At the instance of the plaintiffs, I have caused General Dennis Dent, who resides in the city and county of Mobile, State of Alabama, to come before me at his office in the city of Mobile, on this 4th June, 1853; who, after being carefully examined, and cautioned and sworn by me to testify the whole truth, deposed as follows: That Robert Oliver, at the time of the execution of a deed of trust, made by him in Tuscaloosa County, Alabama, in the year 1838, to James McCown, by which he conveyed to said McCown certain lands for the use, and to secure the future debt of Conrow Ramsey & Co., commonly known then as the Muggins Company. That said Oliver was greatly indebted and embarrassed, and in failing circumstances at said time; that said Oliver owed witness near four thousand dollars, and for which witness had never received a cent, and they obtained a judgment against said Oliver, and sold the lands, and the amount realized therefrom went towards satisfying the Muggins Co. claim. The negroes were, by Oliver, run off, and so I got nothing in satisfaction of my demand against him. Said Oliver owed large sums of money in 1837, '38, and '39, and run off his negroes, as previously stated.

DENNIS DENT.

I, Sidney T. Douglass, a Notary Public in and for said county, do hereby certify that I am not counsel or attorney to either of the parties, or interested in the event of this cause. I further certify that Jack T. Griffin & wife have no agent or attorney known to me within one hundred miles of Mobile, the place of caption; nor do the said James S. Reynolds and wife reside within one hundred miles of the same; and no notice of the taking of this testimony for that reason has been served on either. I further certify that the said testimony was reduced to writing by me, and signed by the said witness.

[SEAL.] SIDNEY T. DOUGLASS,
Notary Public.

$5 00 paid.

District Court of the United States in and for the Northern District of the State of Mississippi, at Pontotoc.

MIDDLE DISTRICT OF ALABAMA, *ss:*

JAMES S. REYNOLDS AND WIFE
vs.
JACK T. GRIFFIN.

Jack T. Griffin, of Chickasaw County, State of Mississippi, being

sworn, says, that he is the defendant in the above entitled cause; that he is advised by his counsel, and verily believes that the testimony of A. Newton Thompson, at present of Tuscaloosa County, State of Alabama, is material and necessary for this deponent in the prosecution of such cause; that the said A. Newton Thompson lives in Tuscaloosa County, State of Alabama, more than one hundred miles from Pontotoc, where the Court at which this deponent expects the said cause will be tried, is appointed by law to be held. And this deponent further says, that he is informed and believes James S. Reynolds, the above-named plaintiff, resides at present in the City of Mobile, more than one hundred miles from Tuscaloosa, the place where the examination of the said witness is expected to be taken; and that, as he is also informed and believes, Peck and Van Hoose, the attorneys of said plantiff, reside in Tuscaloosa aforesaid.

JACK T. GRIFFIN.

District Court of the United States in and for the Northern District of the State of Mississippi, at Pontotoc.

JAMES S. REYNOLDS AND WIFE
vs.
JACK T. GRIFFIN.

Let A. Newton Thompson, the witness named in the above affidavit, be examined *de bene esse* before me accordingly, on Monday, the 22d day of November, inst., at my office, in the City of Tuscaloosa, between the hours of nine o'clock A.M. and five o'clock P.M.; and let one day's notice be given to Jas. C. Spencer, administrator of the estate of Thomas B. Stone, deceased, and beneficiary plaintiff in the above entitled cause, or Peck and Van Hoose, the attorneys of said plaintiff of such examination.

Be it remembered, that on the 20th day of November, 1852, at my office in said City of Tuscaloosa, between the hours of nine o'clock A. M. and five o'clock P. M., Jack T. Griffin personally appeared before me, Jo. C. Guild, Mayor of the City of Tuscaloosa, and made oath that he, the said Jack T. Griffin, was defendant in a suit then depending in the District Court of the United States in and for the Northern District of the State of Mississippi, at Pontotoc, wherein James S. Reynolds and wife were plaintiffs; that the testimony of A. Newton Thompson was material and necessary for him, the said defendant, in the prosecution of such suit, and that the said A. Newton Thompson lived in Tuscaloosa County, more than one hundred miles from Pontotoc, where the Court, at which he the said defendant expected the said cause would be tried, was appointed by law to be held; that the plaintiff, James S. Reynolds, at present resided at Mobile, State of Alabama, more than one hundred miles from Tuscaloosa aforesaid; that Peck and Van Hoose, the plaintiff's attorneys,

resided in Tuscaloosa aforesaid. And the said Jack T. Griffin requested me that the said A. Newton Thompson might be examined according to the directions of the Act of Congress in such case made and provided; whereupon I ordered that the said A. Newton Thompson should be examined *de bene esse* before me at my office, in the said City of Tuscaloosa, on Monday, the 22d day of November, 1852, between the hours of nine o'clock A. M. and five o'clock P. M., and that one day's notice should be given to the said James C. Spencer, administrator as aforesaid, or Peck and Van Hoose, attorneys aforesaid of such examination, to the end that he or they might, if he or they should see fit, be present at the examination and put interrogatories; and I, having satisfactory proof that such notice had been given, and as well the said Jack T. Griffin as the said James C. Spencer and E. W. Peck, attorneys for plaintiff as aforesaid, appearing before my office on this the 22d day of November, 1852, I have therefore proceeded with the said examination; and the said A. Newton Thompson being examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:—

That he knows the parties to this suit; that he was a juror in the case of Doe *ex dem.* Stoddard, and Murphy *vs.* Jack T. Griffin, tried in the Circuit Court of Tuscaloosa County, sometime in the year 1847, as he believes, in relation to a tract of land; thinks James S. Reynolds testified in the above case in favor of the plaintiffs against J. T. Griffin; thinks, also, that Collin Fennell was a witness in the same cause; don't recollect whose witness Fennell was; thinks Augustus Skinner was a juror in the same cause; witness was one of the original panel; some of the original panel were objected to; and thinks Augustus Skinner was placed in the room of some one who was objected to; witness remembers other names of jurors, which he could give if it were necessary.

A. N. THOMPSON.

At the above examination the plaintiff was present by his attorney, E. W. Peck, who declined to cross-examine the witness.

And I, the said Jo. C. Guild, Mayor of the City of Tuscaloosa as aforesaid, do hereby certify that the above deposition of A. Newton Thompson was taken at the time and place mentioned in the caption after said witness had been sworn; and that the same was reduced to writing by me, and read over in the presence of, and approved by said witness, and signed by him. I further certify that the erasures and interlineations in the above deposition were made by me while preparing the same. I further certify that the place of taking the said deposition is more than one hundred miles from Pontotoc, the place of holding said Court; and that I am not of counsel or attorney for either of the parties to the said suit; nor am I interested in the event thereof.

In testimony whereof I have hereunto set my hand and affixed the

seal of the City of Tuscaloosa, this the 22d day of November, A. D. 1852.

JO. C. GUILD,
Mayor of the City of Tuscaloosa.

Commissioner's fee, $5 00, paid by J. T. Griffin.
Witness' " 1 50, " def't.
Sheriff's " 1 25, " "

To the answer to the 6th direct interrogatory, the plaintiff objected; the objection was sustained, and the plaintiff excepted.

The defendant then introduced Cassius M. Stoddard, who testified that he was the person appointed as joint trustee with one James L. Murphy by the Chancery Court of Alabama, in the place of one James McCown, former trustee of the firm of Conrow, Ramsey, & Co.; that he accepted said trust, and that he never authorized, empowered, and retained one William Cochran, or any one else, either as agent, attorney, or otherwise, to institute any suit or other proceeding, either in law or equity, against the said defendant, or any other person, to recover any land or other property, either individually or as trustee, as aforesaid, and that any such action or proceeding in his name, or by professed authority, was without his knowledge, consent, approbation, or ratification. He further testified that he never asserted hostilely, or otherwise, any title possessed by him either as trustee, or otherwise, against said Griffin, or the said plaintiff, Reynolds, to the lands in controversy, or made any demand whatever upon any person for the delivery of the possession of the same to him as trustee, or otherwise, and never authorized, empowered, or retained either William Cochran, or any one else, to do so for him, or in his name, and disclaimed any and all action, if any, which had been taken for him, or in his name, in the premises aforesaid.

The defendant then offered the following deed, executed by the plaintiff to one Abner Wynn previous to the institution of this action.

This indenture, made this the twenty-eighth day of March, in the year one thousand eight hundred and forty-six, between James S. Reynolds of the first part, debtor; Abner Winn of the second part, trustee; and Thomas P. McConnell of the third part, creditor; all of the County of Tuscaloosa, and State of Alabama—witnesseth: That whereas, the said party of the first part, together with Mary Ann Reynolds, his wife, did, on the fourth day of September, A. D. 1843, execute their joint and several promissory note for the sum of seventeen hundred and fifty dollars, drawn payable on the first day of March, A. D. 1846, to Jack T. Griffin, or order, with interest from the first day of January then next following, for value received, and delivered the same to said Griffin, on which note is a credit of one hundred and ninety-five dollars, indorsed October 11th, 1844; and whereas, the said Griffin did, on the day of ,

for value received, transfer the said note to the said third party; and the said first party being willing and desirous to secure the payment of said note, and all interest that shall accrue thereon, in consideration of the premises, and of the sum of one dollar by the said party of the second part paid to the said party of the first part, the said first party hath granted, bargained, and sold, and by this indenture doth hereby grant, bargain, and sell unto the said second party the following described tracts of land lying in Tuscaloosa County, and known as the east half of the southeast quarter of section ten, township twenty-one, range eleven west; also the west half of the southwest quarter of section eleven, township 21, range 11 west; the east half of the northwest ¼ of section 12, township 21, range 11 west; the west half of the northwest ¼ of section 12, township 21, range 11 west; the east half of the northwest quarter of section 14, township 21, range 11 west; the southwest quarter of the southeast ¼ of section 2, township 21, range 11 west; and one quarter of the same quarter, north and east half; the east half of the southeast quarter of section 11, township 21, range 11 west; the west ½ of the southeast ¼ of section 11, township 21, range 11 west; the east half of the southwest ¼ of section 11, township 21, range 11 west; the south half of the east ½ and south of the west ½ of the northeast ¼ section eleven, township 21, range eleven west, and the northeast quarter of section fifteen, township twenty-one, and range eleven west; the southwest ¼ and west part of that quarter, section twelve, township twenty-one, range eleven west, containing eleven hundred and eighty acres, more or less; together with all the privileges and appurtenances to the same belonging, or in anywise appertaining: To have and to hold the said land, subject to the stipulations and trust following; that is to say, upon trust to permit the said first party to have the possession of the said land, and to take the rents and profits of the same, until the twenty-eighth day of July next, after the date of this instrument, and if the note above described shall then have been fully paid off and discharged, together with all interest due thereon, and also all expenses arising on this deed, then this deed shall be null and void, and of no effect. But, if the said note shall remain unpaid on the said twenty-eighth day of July, or any part thereof; then said party of the second part, upon request of the said third party, or of his executors or administrators, shall enter upon the said lands and sell the same at public auction for cash in the City of Tuscaloosa, first giving thirty days' notice in such manner as he shall believe will best promote the interest of both parties; and out of the money arising from said sale, pay first all expenses, and out of the balance pay the entire amount of said note, and all interest due thereon; and the balance, if any, pay to the said party of the first part, or his executors or administrators. And it is further understood and agreed, that in case of the death, removal, or refusal of the said second party at any time to act as trustee, that then the said third party, or his executors, or

administrators, shall have power to appoint another person trustee, who shall thereupon be vested with all the rights and powers of the said second party, and such appointment of trustee may be made as often as it may become necessary to carry into effect the objects of this deed.

In witness whereof the said parties have hereunto set their hands and seals, the day and date above written.

JAMES S. REYNOLDS. [SEAL.]
ABNER WINN. [SEAL.]
THOMAS P. McCONNELL. [SEAL.]

Test. RICH'D C. M'LISTER,
" WILLIAM D. BYARS.

THE STATE OF ALABAMA,
Tuscaloosa County:

Personally appeared before me, Robert P. Blount, Clerk of the County Court for said County, James S. Reynolds and Thomas P. McConnell, and the said James S. Reynolds acknowledged that he signed, sealed, and delivered the foregoing deed of trust on the day of the date thereof to the aforesaid Abner Winn, for the benefit of said McConnell, and the said McConnell acknowledged that he signed, and sealed the same. Also appeared before me, Clerk as aforesaid, Richard C. McLister, a subscribing witness to said deed, who being duly sworn, deposeth and saith, that he saw Abner Winn sign and seal said deed; that he, this deponent, together with the other witness, subscribed their names thereto in presence of the said Winn, and in the presence of each other, on the day of the date thereof.

Given under my hand and seal the 4th day of April, A. D. 1846.

ROBERT P. BLOUNT, [SEAL.]
Clerk.

Filed for registration on the 4th day of April, A. D. 1846, and on the 6th day of the same month and year recorded in Book V, page 224, 225, and 226.

ROBERT P. BLOUNT,
Clerk.

THE STATE OF ALABAMA,
Tuscaloosa County:

I, Moses McGuire, Clerk of the Probate Court for said county (which said Court of Probate is a Court of record, having general jurisdiction), hereby certify that I am Register of Deeds and Conveyances of said county, and the keeper of the books in which deeds and conveyances registered; I further certify that the foregoing pages contain a true copy of the original deed of trust made by James S. Reynolds, of the first part, Abner Winn, Trustee, of the second part,

and Thomas P. McConnell, of the third part, together with the probate, and the certificate of registration thereof, as the same appears of record in my office.

Given under my hand and seal of office, this 26th day of November, A. D. 1853.

[SEAL.] MOSES McGUIRE,
Clerk.

THE STATE OF ALABAMA,
Tuscaloosa County:

I, Moses McGuire, Judge of Probate for said county, hereby certify that Moses McGuire, whose genuine signature appears above, is and was at the time of signing the same, Clerk of the Court of Probate of said county, duly commissioned and sworn, and that his said certificate is in due form, and that he is the keeper of the records of the Court of Probate for said county, and that he is the proper officer to make said certificate.

Given under my hand this 26th day of November, A. D. 1853.

MOSES McGUIRE,
Judge of Probate.

THE STATE OF ALABAMA,
Tuscaloosa County:

I, Moses McGuire, Clerk of the Court of Probate for said county, hereby certify that Moses McGuire, whose signature and certificate appears within, is, and was at the time of signing the same, Judge of Probate of said county, duly commissioned and qualified.

In witness whereof I have hereto set my hand and seal of office, this 26th day of November, A. D. 1853.

[SEAL.] MOSES McGUIRE,
Clerk.

Copy	$1 50
3 certificates, 4*s*.	1 50
State and county tax on 2 seals, 6*s*. each .	1 50
	$4 50

To the introduction of this deed pl'ff objected, upon the ground that if Griffin had no title to the land in controversy at the date of the execution of this deed to Reynolds, then the deed from Reynolds to Wynn conveyed no title, and was therefore void. This objection the Court sustained, excluded the deed, and the deft. excepted.

The plaintiff then offered the depositions of Martin Richards, James Shirley, Henry Hyche, Asa Boothe, William Shulton.

District Court of the United States in and for the Northern District of the State of Mississippi, at Pontotoc.

MIDDLE DISTRICT OF ALABAMA, ss:

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN.

James S. Reynolds, of the county of Tuscaloosa, State of Alabama, being sworn, says that he is the plaintiff in the above entitled cause; that he is advised by his counsel, and verily believes, that the testimony of Henry Hyche, William Thompson, Asa Booth, David B. Dickerson, James B. Wallace, Martin Richards, James Shirley, and William Sutton, at present of Tuscaloosa county, State of Alabama, is material and necessary for this deponent in the prosecution of such cause: that the said Henry Hyche, William Thompson, Asa Booth, David B. Dickerson, James B. Wallace, Martin Richards, James Shirley, and William Sutton live in Tuscaloosa county, State of Alabama, more than one hundred miles from Pontotoc, where the Court at which this deponent expects the said cause will be tried, is appointed by law to be held.

And this deponent further says that he is informed, and believes Jack T. Griffin, the above named defendant, resides at Houston, in the County of Chickasaw, State of Mississippi, more than one hundred miles distant from the place where the examination of said witnesses is expected to be taken, and that Ormond & Nicholson, the attorneys of the said Jack T. Griffin, reside at Tuscaloosa, the place of taking the deposition.

JAMES S. REYNOLDS.

DISTRICT COURT OF THE UNITED STATES,
in and for the Northern District of the State of Mississippi, at Pontotoc:

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN.

Let Henry Hyche, William Thompson, Asa Booth, David B. Dickerson, James B. Wallace, Martin Richards, James Shirley and William Sutton, the witnesses named in the above affidavit, be examined *de bene esse* before me accordingly, at my office in the city of Tuscaloosa, State of Alabama, on Thursday, the 27th day of May, 1852, between the hours of nine o'clock A. M. and five o'clock P. M., and let one day's notice be given to Ormond & Nicholson, the attorneys of said defendant, of such examination.

Be it remembered, that on the 25th day of May, 1852, at my office, James S. Reynolds personally appeared before me, Jo. C. Guild, Mayor of the City of Tuscaloosa, and made oath that he, the

said James S. Reynolds, was plaintiff in a suit then depending in the District Court of the United States in and for the Northern District of the State of Mississippi, at Pontotoc, wherein Jack T. Griffin was defendant; that the testimony of Henry Hyche, William Thompson, Asa Booth, David B. Dickerson, James B. Wallace, Martin Richards, James Shirley and William Sutton, of the County of Tuscaloosa, State of Alabama, was material and necessary for him, the said plaintiff, in the prosecution of such suit, and that they, the said Henry Hyche, William Thompson, Asa Booth, David B. Dickerson, James B. Wallace, Martin Richards, James Shirley and William Sutton lived in the County of Tuscaloosa, State of Alabama, more than one hundred miles from Pontotoc, where the Court at which the said plaintiff expected the said cause would be tried, was appointed by law to be held: that the said Jack T. Griffin, the above named defendant, resided at Houston, in the County of Chickasaw, State of Mississippi, more than one hundred miles from Tuscaloosa aforesaid; and that Ormond & Nicholson, his attorneys, resided at Tuscaloosa aforesaid. And the said James S. Reynolds requested me that the said Henry Hyche, William Thompson, Asa Booth, David B. Dickerson, James B. Wallace, Martin Richards, James Shirley and William Sutton, might be examined according to the act of Congress in such case made and provided. Whereupon I ordered that the said Henry Hyche, William Thompson, Asa Booth, David B. Dickerson, James B. Wallace, Martin Richards, James Shirley, and William Sutton should be examined *de bene esse* before me at my office in the City of Tuscaloosa, on Thursday, the 27th day of May, 1852, between the hours of nine o'clock A. M. and five o'clock P. M., and that one day's notice should be given to the said Jack T. Griffin, the defendant, or Ormond & Nicholson, his attorneys, of such examination, to the end that they might be present, if they should see fit, at the examination, and put interrogatories: and I, having satisfactory proof that such notice had been given, and as well the said James S. Reynolds as the said Jack T. Griffin appearing before me at my office, on this the 27th day of May, 1852, I have therefore proceeded with the said examination.

And the said Martin Richards, the first witness, being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith that he is acquainted with the parties to the suit. That he was the executor of the last will and testament of Joseph C. Noble, dec'd. He died possessed of the plantation adjoining North Port; said plantation came into his possession as executor in December, 1847. Mr. Reynolds, James Shirley and others cultivated the plantation in the year 1849. Witness cultivated the said plantation in the year 1848 with the hands of the estate of Noble. No person, to the knowledge of witness, cultivated said plantation in the year 1848, save the overseer of the negroes of the estate of Noble. In this witness is very positive, for he knows it is so. Witness has lived in North Port fifteen or sixteen years.

No other person by the name of Joseph Noble has ever died in North Port in that length of time, save the said Joseph C. Noble.

Cross-Examination.

Witness says no other person except himself has ever administered on the estate of the said Joseph C. Noble.

Direct Examination.

Witness says the said plantation was sold by order of Court, in the year 1849. Messrs. Dempsey and Joseph Williamson purchased the plantation. Reynolds and several others were part cultivators at the time of the sale of said land. Doesn't know who cultivated said plantation in the year 1850. Possession was to be given of said premises to the Messrs. Williamson, in the beginning of the year 1850.

MARTIN RICHARDS.

And the said James Shirley, the second witness, being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith :—

That he is acquainted with the parties to this suit; that he has lived in North Port about eighteen or nineteen years. Knew Joseph C. Noble in his lifetime. Said Noble died in 1847, to the best of his recollection. No other person by the name of Joseph Noble has died in North Port in that time, except Joseph C. Noble. Said Noble left a plantation adjoining North Port. Witness, Reynolds, Dr. Powell, Mr. Self, Mr. Pogue and Mr. Williamson, together cultivated the said plantation in 1849. Said plantation was rented by said parties, of Martin Richards, the administrator of said estate, the same person who has just been examined in behalf of plaintiff. The two Williamsons cultivated the most of said plantation in 1850. Said Reynolds and Mr. Hamner cultivated a portion of it likewise in the year 1850.

JAMES SHIRLEY.

The defendant declined to cross-examine this witness.

And the said Henry Hyche, the third witness, being examined, and cautioned and duly sworn to testify the whole truth and nothing but the truth, saith :—

That he is acquainted with the parties to this suit, knows the plantation sold by Griffin to Reynolds and wife, the same plantation that old Esquire Robert Oliver used to live on, situated about five miles from North Port on Big Creek; thinks Mr. Reynolds cultivated said plantation in the year 1848; thinks Reynolds and family lived in North Port during that year, and kept the hotel there; thinks Reynolds lived on said plantation in 1847; a portion of his (Reynolds's) slaves remained on the plantation and culti-

vated it after he removed to town in the year 1848; he is quite confident that Reynolds's slaves cultivated said place in the year 1848; Reynolds passed frequently back and forth from town to the said plantation in the year 1848; Doesn't know, but thinks Reynolds's negroes left the plantation in 1848; Asa Booth was Reynolds's overseer a part of the year 1848; doesn't know what time said Booth left said plantation; don't remember who attended to the business on the plantation after Booth left; witness rented a portion of the plantation in the year 1849, the year after it was cultivated by Reynolds; witness has lived in about a mile of the plantation some eight or nine years.

Cross-Examination by Def't's Counsel.

Witness says he don't know of his own knowledge that the slaves belonged to Reynolds, though he was attending to them in the year 1847 on the plantation; don't know who hired Booth as overseer of said plantation, but he, Booth, was on the plantation, attending to business; witness rented a portion of said plantation, in 1849 and 1850, of William Cochrane; and he bought a portion of it of the said William Cochrane, he thinks in the first of the year 1851; was to have a quit-claim title to said land; the said Cochrane took control of plantation, and rented a portion of it to witness and Mr. Sutton in the year 1849; don't know that said Cochrane ever had any control there until 1849; the said Cochrane has sold a portion of it and rented it every year until this, 1852, and that said Cochrane is now dead.

Direct Examination.

Witness says Reynolds and family lived there and cultivated said plantation with the negroes under his control in the year 1847; a portion of the same negroes were there in 1848, that cultivated it in the year 1847, under Reynolds; witness says he has no deed from Wm. Cochrane for the land, but has an agreement for a quit-claim title from him.

HENRY HYCHE.

And the said Asa Booth, the fourth witness, being examined, and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:—

That he is acquainted with Reynolds, and knew Griffin when he lived in this county; witness was overseer for Reynolds in the year 1848; it was on the same plantation that Reynolds lived on the year before, 1847; the same plantation that Esquire Robert Oliver lived on; Big Creek runs through the said plantation; said plantation is situated a little over five miles from North Port; witness left the employment of Reynolds about the last of August, 1848; thinks there were some five slaves under his control on said plantation; Reynolds employed witness as overseer in the year 1848; thinks

Michael Griffin was Reynolds's overseer after he left; witness lived in the neighborhood after he left the said plantation; Reynolds's slaves remained on the plantation till the crop was gathered; Reynolds was living at the tavern in North Port that year.

Cross-Examination.

Witness doesn't recollect what year def't left the plantation; does'nt know what time Reynolds first went into possession of said plantation; don't recollect the year when Reynolds left the plantation, but thinks it was in 1848; witness says he lived with Reynolds one month in 1849, at the tavern in North Port; lived with William Manast in the year 1850; lived at home in the year 1851, with his mother; does'nt know when the said Cochrane took control of said plantation; don't know of his own knowledge, to whom those negroes he superintended on the plantation belonged.

his
ASA + BOOTH.
mark.

And the said William Sutton, the sixth witness, being examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:—

That he is acquainted with the parties to this suit; that he knows the plantation sold by Griffin to Reynolds, situated on Big Creek, about five miles from North Port; Reynolds and family lived on said plantation in 1847, and some two or three years previous, Reynolds and his white family moved from said plantation some time in December, 1847, or January, 1848, to North Port, where he kept tavern; Reynolds cultivated the land 1848; some time in November, 1848, witness hauled Reynolds's cotton crop from his plantation; he don't recollect there were any slaves there at that time, except an old negro man, and he left him there about the middle of January, 1849; witness rented a portion of said land the year 1849, and took possession through his brother a few days before Christmas, 1848; there was a good deal of Reynolds's property, his farming utensils, &c., on the premises when witness took possession, which was carried off by Reynolds afterwards; a portion of the year 1848, Asa Booth was Reynolds's overseer; when witness was hauling the cotton from there, Michael Griffin superintended his affairs; the cotton was hauled off about the last days of November or the first of December; witness thinks Richard McLester hired him to haul off the cotton; the contract to haul the cotton was made between witness and McLester.

Cross-Examination.

Witness says he never heard of any writ to dispossess Reynolds of the premises until long after Reynolds left the place, and that was

about a year ago, when Griffin was inquiring of witness in relation to that fact. Witness lived something like a mile from the premises in 1848; this year, 1852, he moved on to a portion of the premises. Witness lived some fifteen years in a mile or so from the premises before he moved to his present place of residence. Witness made the contract in the latter part of December, 1848, for the rent of a portion of the land in 1849, with William Cochrane, and rented the lands in 1849, 1850, and 1851, of, and paid the rents to the said Cochrane. Witness bought a portion of said lands, in 1851, from the said Cochrane, and entered into an agreement with him for a quit-claim title. A portion of it is tolerably fair land, and the larger portion of it is very poor and broken land. Witness was in Court during a portion of the week of the trial of the cause of Doe *ex dem.* Stoddard & Murphy *vs.* Jack T. Griffin, but hasn't a distinct recollection of the case. Witness learned from Reynolds that he was a witness in said cause, and witness understood him to be a witness for the Muggins Company. Wttness had a conversation with Reynolds after the decision of the case, and witness remarked to Reynolds that he supposed he, Reynolds, would not be a loser by it, and Reynolds said, not if he got his money back, which he would rather have than the land. Witness rented from the said Cochrane, in 1849, and continued to rent from him till he purchased a portion of the land. Cochrane was the only owner of it witness heard spoken of after his renting from Cochrane in the latter part of 1848.

Direct Examination.

Witness says he don't remember anything which would cause him to think he was present at the trial of the cause above spoken of. Witness says Reynolds told him he was attending Court as a witness in that case.

WM. SUTTON.

Jo. C. Guild, Mayor of Tuscaloosa, as aforesaid.

And I do further certify that the preceding depositions were reduced to writing by me, with the exception of the deposition of James B. Wallace, a portion of which was written by himself, and signed by all the witnesses—Martin Richards, James Shirley, Henry Hyche, James B. Wallace, and William Sutton, with the exception of Asa Booth, who made his mark; further, that the interlineations, erasures, &c., in the preceding depositions, were made by me while reducing the same to writing. And I further certify that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof. I further certify that the plaintiff declined to take the testimony of David B. Dickerson, one of the witnesses mentioned in the caption.

In testimony whereof I have hereunto set my hand and affixed the seal of the city of Tuscaloosa, this the first day of June, A. D. 1852.

[SEAL.] JO. C. GUILD,

Mayor of the City of Tuscaloosa.

Commissioner's fee, $20 00, paid by J. S. Reynolds.

The plaintiff then offered the following deposition of James Wallace and William Cochrane, with the certificates hereto attached.

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

In a certain cause, pending in the District Court of the United States in and for the Northern District of the State of Mississippi, at P ntotoc in said State of Mississippi, wherein James S. Reynolds and wife are plaintiffs, and Jack T. Griffin *et al.* are defendants, I, Jo. C. Guild, Mayor of the city of Tuscaloosa, at the instance of the said plaintiffs in said cause, have this, the twenty-seventh day of May, A. D. 1851, caused William Cochrane and James B. Wallace, who reside in the county of Tuscaloosa, in said State, more than one hundred miles from Pontotoc, the place of holding said Court, to come before me, at the office of Arthur Foster, in the city of Tuscaloosa, at the hour of ten o'clock A. M., more than one hundred miles from Pontotoc, and the said William Cochrane, the first witness, having been duly sworn and charged by me to speak the truth, the whole truth, and nothing but the truth in the premises, deposes and says: I am acquainted with Mr. Reynolds and Mr. Griffin; Mrs. Reynolds I never saw that I am aware of; I think I understood the cause and subject-matter of this suit; I was one of the attorneys for the plaintiffs in a suit in the Circuit Court of Tuscaloosa County, Alabama, entitled John Doe *ex dem.* Cassius M. Stoddard and James S. Murphy, Trustees, *vs.* Jack T. Griffin; it was an action of ejectment to recover certain lands in Tuscaloosa County, before then owned by Robert Oliver; the cause was tried at the March Term, 1847, and a verdict found for the plaintiffs; the case was removed by writ of error to the Supreme Court, and was affirmed, I think, in December, 1847; the case was litigated from beginning to end, with great earnestness and pertinacity; upon the part of the defence, I think extreme and unusual means were used to make the defence successful; the Sheriff put the plaintiff, or rather me, as their agent, in possession, by informing me that the premises were subject to their entry; there was no force used in respect to the possession, but the Sheriff, I believe, would have used compulsion if necessary, and the possession was surrendered under the conviction that it could not be legally or peaceably retained, and I think not otherwise; the possession was retained as long as it well could be, and was surrendered, I believe, with reluctance. Reynolds was in possession of the premises, and is the person who was put out of possession, as before stated; Reynolds is one of the plaintiffs in this suit, I suppose, and who resisted the yielding the possession, and complained about it very much as a hard case. I am informed that Mr. Griffin desired to take my testimony; I was at the Court-House on last Wednesday morning, and wished my testimony taken, but Mr. Griffin was not present; Mr. Skelton and Mr. Reynolds was present; I informed them I should go out of town about fifteen miles, but would return the next evening;

on the next (Thursday) evening I returned and called at the Court-House, at about 4 o'clock P. M.; the Commissioner, Mr. Skelton, and one of the attorneys of Mr. Reynolds, were there, and at their request I went to the office of Hon. Judge Ormond, to advise him of my readiness to be examined; he was not in his office; I remained in the vicinity of the Post-Office until about 6 o'clock P. M.; the next morning Mr. Reynolds came to my house and requested me to attend at the Court-House; I rode down with him in a short time; Judge Ormond came; he asked me a few questions, informally; stated that Mr. Griffin had left the previous evening, and declined the responsibility of taking my testimony in the absence of his client.

WILLIAM COCHRANE.

And I, the said Jo. C. Guild, Mayor, &c., as aforesaid, do hereby certify that I am not of counsel or attorney of either of the said parties, or interested in the event of said suit: I do further certify that notice of time and place of taking said deposition was served upon John J. Ormond by the Sheriff, who acted as attorney for said def'ts in taking depositions of two other witnesses in this cause; and that def'ts have no other counsel within my knowledge, within one hundred miles from this place. I do further certify that the said deposition was reduced to writing by the said witness, William Cochrane; the other witness, James B. Wallace, not being present at the examination, said deposition was subscribed by said witness in my presence; and the said deposition was not out of my possession until the same was sealed up and directed to the Clerk of the District Court.

In testimony whereof I have hereunto set my hand and affixed the seal of the City of Tuscaloosa, this the 27th day of May, A. D. 1851.

[SEAL.] JO. C. GUILD,
Mayor of the City of Tuscaloosa.

Commissioner's fee $5 00.

DISTRICT COURT OF THE UNITED STATES,
in and for the Northern District of the State of Mississippi:

JAMES S. REYNOLDS AND WIFE, Pl'tff,
vs.
JACK T. GRIFFIN *et al.*, Def'ts.

James S. Reynolds, of Tuscaloosa County, State of Alabama, being sworn, says that he is plaintiff in the above entitled cause; that he is advised by his counsel, and verily believes that the testimony of William Cochrane and James B. Wallace, at present of said county of Tuscaloosa, is material and necessary for this deponent in the prosecution of said cause; that the said William Cochrane and James B. Wallace both live in or near the City of Tuscaloosa, more than one hundred miles from Pontotoc, Mississippi, where the Court at which this deponent expects the said cause will be tried, is ap-

pointed by law to be held: And this deponent further says, that as he is informed and believes, Jack T. Griffin *et al.*, the above named defendants, reside in Chickasaw County, in the State of Mississippi, about one hundred and twenty miles or more distant from Tuscaloosa, the place where the examination of said witness is expected to be taken; and that as he is also informed and believes, Baldwin, the attorney of the said defendants, resides at the seat of Justice in Chickasaw county aforesaid, about one hundred and twenty miles or more distant from Tuscaloosa, the expected place of taking the examination of said witnesses as aforesaid, and that John J. Ormond, who acted as attorney for said defendant in taking the depositions of two other witnesses in said cause, at the instance of said defendants, in said City of Tuscaloosa, resides in said City of Tuscaloosa.

JAMES S. REYNOLDS.

Sworn to and subscribed before me, this 26th May, 1851.

JO. C. GUILD,
Mayor of Tuscaloosa.

DISTRICT COURT OF THE UNITED STATES,
in and for the Northern District of Mississippi:

JAMES S. REYNOLDS AND WIFE, Pl'tffs,
vs.
JACK T. GRIFFIN *et al.*, Def'ts.

UNITED STATES OF AMERICA,
Middle District of Alabama:

James S. Reynolds, of the county of Tuscaloosa, in the State of Alabama, being duly sworn, says: that he is the plaintiff in the above entitled cause; that he is advised by his counsel, and verily believes that the testimony of James B. Wallace, at present of the city of Tuscaloosa, in the State of Alabama, attorney at law, is material and necessary for the deponent in the prosecution of said cause; that the said James B. Wallace lives at the City of Tuscaloosa, in the State of Alabama, more than one hundred miles from Pontotoc, in the State of Mississippi, where the Court at which this deponent expects said cause will be tried is appointed by law to be held: And this deponent further says, that as he is informed and believes, Jack T. Griffin *et al.*, the above named defendants, reside in Chickasaw county in the State of Mississippi, about one hundred and twenty miles distant from the City of Tuscaloosa, in the State of Alabama, the place where the examination of said witness is expected to be taken, and that, as he is informed and believes, Baldwin, the attorney of the said Jack T. Griffin, resides at the seat of Justice in Chickasaw county, in the State of Mississippi, about one hundred and twenty miles or more from Tuscaloosa as aforesaid: And the said Jack T. Griffin has no attorney, known to deponent,

who resides within one hundred miles from Tuscaloosa, the place of taking said deposition.

JAMES S. REYNOLDS.

Subscribed and sworn to before me, 27th day of May, 1851.

MOSES McGUIRE,
Judge of Probate Court of Tuscaloosa County, Ala.

Question 1. Were you counsel for either party in the case of Doe *ex dem.* Stoddard & Murphy *vs.* Jack T. Griffin, in the Circuit Court of Tuscaloosa County, being ejectment to recover possession of a tract of land in the possession of James S. Reynolds, sold to him by said Griffin?

Answer. I was counsel, with W. Cochrane, Esq., for the plaintiff in said cause.

Question 2. Was there any collusion between plaintiffs or their counsel with said Reynolds, about the recovery had in said cause, and the obtaining possession of said land?

Answer to Int. 2. This cause was as severely contested as any I ever tried in a practice of twenty years. There was no collusion with any person; we recovered on the strength of our cause, when there were other persons present and contesting, having property to a large amount depending on the same title. The sheriff put us in possession, agreeably to the mandate of the writ of possession put in his hands.

And further this deponent saith not.

JAMES B. WALLACE.

And I do further certify that the preceding deposition was reduced to writing by the said James B. Wallace, in my presence, and signed by the said James B. Wallace, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

MOSES McGUIRE, [SEAL.]
Judge of the Court of Probate of Tuscaloosa County, Ala.
May 27th, 1851.

DISTRICT COURT OF THE UNITED STATES,
for the Northern District of Mississippi:

JAMES S. REYNOLDS AND WIFE, Pl'ff,
vs.
JACK T. GRIFFIN *et al.*, Def'ts.

SIR: You are hereby notified that William Cochrane and James B. Wallace will be examined *de bene esse* before me, Joseph C. Guild, the Mayor of the City of Tuscaloosa, State of Alabama, at the office of Arthur Foster, Esq., in said city, on Tuesday, the 27th day of May instant, at ten o'clock A. M., as a witness for the above plain-

tiff, according to the act of Congress in such case made and provided; at which time and place you are entitled by law to be present and to put interrogatories to the said witness.

JO. C. GUILD,
Mayor of Tuscaloosa.

To JACK T. GRIFFIN *et al.*, the above named defendants,
or, JOHN J. ORMOND, attorney for said defendants.
May 26, 1851.

To the admission of these depositions the def't objected, upon the ground that no notice was served upon him or his counsel, and that his counsel resided within one hundred miles of the place of taking the same.

The pl'ff proved, by the certificate of the Commissioner, that notice of the taking of said depositions was served upon John J. Ormond, who had acted as the counsel of the def't in taking certain depositions upon former occasions, and read the other matters contained in said certificate.

The defendant offered to prove by his own oath that the said Ormond was only his counsel to attend the taking of former depositions, and was not his counsel upon the taking of the depositions of the said Wallace and Cochrane.

To this the pl'ff objected. The Court sustained the objection, and admitted the depositions. The def't excepted.

The pl'ff then read the following deeds from the Sheriff of Tuscaloosa County to the def't:—

THE STATE OF ALABAMA,
Tuscaloosa County:

To all to whom these presents shall come, I, William Braly, Sheriff of Tuscaloosa, send greeting:

Whereas, by a writ of execution issued out of the County Court of Tuscaloosa County, to me directed and delivered, tested the twentieth day of August, 1841, I was commanded to make of the goods and chattels, lands and tenements of Robert F. Oliver, in my county, the sum of two hundred and seventy $\frac{48}{100}$ dollars, which the President and Directors of the Bank of the State of Alabama had recovered against him in the said Court, for their damages which they had sustained, as well by reason of the non-performance of certain promises as for their costs and charges attending the collection of the same; and whereas, after the coming of said writ to me, and before the day of the return thereof, I did, by virtue of said writ, seize and take the land hereinafter particularly described, and have, for want of goods and chattels in my county, of the said Robert F. Oliver, to satisfy the said damages and costs, sold the said land, as is hereafter mentioned, at public auction, according to the statute in such cases provided, to Jack T. Griffin, for the sum of sixty-five $\frac{70}{100}$ dollars,

being the highest sum bid for the same: Now know ye, that I, William Braly, Sheriff as aforesaid, by virtue of the said writ of execution and of the statute in such case provided, in consideration of the said sum of sixty-five $\frac{70}{100}$ dollars, to me in hand paid by the said Jack T. Griffin, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Jack T. Griffin, and to his heirs and assigns forever, all the E. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ S. 10, T. 21, R. 11 west; the W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. 11, T. 21, R. 11 west; the E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ S. 12, T. 21, R. 11 west; the W. $\frac{1}{2}$ N. W. $\frac{1}{4}$ S. 12, T. 21, R. 11 west; the E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ S. 14, T. 21, R. 11 west; the S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ S. 2, T. 21, R. 11 west; the W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ S. 11, T. 21, R. 11 west, and $\frac{1}{4}$ same quarter north and east half; the E. $\frac{1}{2}$ S. E. $\frac{1}{4}$ S. 11, T. 21, R. 11 west; the W. $\frac{1}{2}$ S. E. $\frac{1}{4}$ S. 11, T. 21, R. 11 west; the E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. 11, T. 21, R. 11 west; the S. $\frac{1}{2}$ of E. $\frac{1}{2}$ & S. $\frac{1}{2}$ of W. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ S. 11, T. 21, R. 11 west; the N. E. $\frac{1}{4}$ S. 15, T. 21, R. 11 west; the S. W. $\frac{1}{4}$, and west part of that quarter, S. 12, T. 21, R. 11 west, containing fifty acres; the E. $\frac{1}{2}$ N. E. $\frac{1}{4}$ S. 14, T. 21, R. 11 west, of land, with its appurtenances, and all the estate, right, title, and interest which the said Robert F. Oliver had in the said tracts, pieces, or parcels of land, on the 26th day of July, 1841, or at any time since had, or now hath; to have and to hold the said lands and premises, and every part thereof, with the appurtenances, unto the said Jack T. Griffin, his heirs and assigns forever, as fully and absolutely as I, the said William Braly, Sheriff as aforesaid, and under the authority aforesaid, might, could, or ought to sell and convey the same.

In witness whereof, I hereunto set my hand, and affix my seal this, the 4th day of October, A. D. 1841.

WILLIAM BRALY, [SEAL.]
She'ff.

THE STATE OF ALABAMA,
Tuscaloosa County:

Personally appeared before me, Moses McGuire, Clerk of the County Court for said County, William Braly, Sheriff of Tuscaloosa County, who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the aforesaid Jack T. Griffin, for the purposes therein expressed.

Given under my hand and seal, this 19th day of October, A. D. 1841.

MOSES McGUIRE, [SEAL.]
Clerk.

Filed for registration on the 19th day of October, A. D. 1841, and on the 20th day of same month and year recorded in Book R, pages 537 and 538.

MOSES McGUIRE,
Clerk.

THE STATE OF ALABAMA,
Tuscaloosa County:

To all to whom these presents shall come, I, William Braly, Sheriff of Tuscaloosa County, send greeting:—

Whereas, by a pluries writ of execution, issued out of the County Court of Tuscaloosa County, to me directed and delivered, tested the 28th Sept., 1841, I was commanded to make of the goods and chattels of Robert Oliver in my county, four hundred and twenty two $\frac{3}{100}$ dollars, which John W. Shackelford had recovered against him in the said Court, for his damages which he had sustained as well by reason of the non-performance of certain promises as for his costs and charges attending the collection of the same, and that if sufficient goods and chattels could not be found, that then I should cause the said damages and costs to be made of the lands and tenements whereof the said Robert Oliver was seized on the third day of February, 1840, or at any time afterwards, in whose hands soever the same might be, as by the said writ of reference being thereunto had, more fully appears. And whereas, after the coming of said writ to me, and before the day of the return thereof, I did by virtue of the said writ seize and take the land hereinafter particularly described, and have for want of goods and chattels in my county of the said Robert Oliver, to satisfy the said damages and costs, sold the said land, as is hereafter mentioned, at public auction, according to the statute in such cases provided, to Jack T. Griffin, for one hundred and twenty-eight $\frac{60}{100}$ dollars, being the highest sum bid for the same. Now, know ye, that I, William Braly, Sheriff as aforesaid, by virtue of the said writ of execution and of the statute in such cases provided, in consideration of the sum of one hundred and twenty-eight $\frac{60}{100}$ dollars, to me in hand paid by the said Jack T. Griffin, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Jack T. Griffin, and to his heirs and assigns forever, all the E. $\frac{1}{2}$, S. E. $\frac{1}{4}$, S. 10, W. $\frac{1}{2}$, S. W. $\frac{1}{4}$, S. 11, E. $\frac{1}{2}$, N. W. $\frac{1}{4}$, S. 12, W. $\frac{1}{2}$, N. W. $\frac{1}{4}$, S. 12, E. $\frac{1}{2}$, N. W. $\frac{1}{4}$, S. 14, S. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$, S. 2, W. $\frac{1}{2}$, N. E. $\frac{1}{4}$, S. 11 $\frac{1}{4}$, same $\frac{1}{4}$ N. end and E. $\frac{1}{2}$, E. $\frac{1}{2}$, S. E. $\frac{1}{4}$, S. 11, W. $\frac{1}{2}$, S. E. $\frac{1}{4}$, S. 11, E $\frac{1}{2}$, S. W. $\frac{1}{4}$, S. 11, S. $\frac{1}{2}$ of E $\frac{1}{2}$, and S. $\frac{1}{2}$ of W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ S. 11, N. E. $\frac{1}{4}$, S. 15, S. W. $\frac{1}{4}$ and W. part of that $\frac{1}{4}$, S. 12, E $\frac{1}{2}$, N. E. $\frac{1}{4}$, S. 14, all in T. 21, R. 11 west of land with all its appurtenances, and all the estate, right, title, and interest which the said Robert Oliver had in the said tract, piece, or parcel of land, on the third day of February, 1840, or at any time since had, or now hath, to have and to hold the said land and premises, and every part thereof, with the appurtenances, unto the said Jack T. Griffin, his heirs and assigns forever, as fully and absolutely as I, the said William Braly, Sheriff as aforesaid, and under the authority aforesaid, might, could, or ought to sell and convey the same.

In witness whereof, I hereunto set my hand, and affix my seal, this 6th Dec'r, 1851.

WILLIAM BRALY, [SEAL.]
Sheriff.

Test.
SAMUEL HOLLOWAY,
D. J. J. W. FULTON.

THE STATE OF ALABAMA,
Tuscaloosa County:

Personally appeared before me, Moses McGuire, Clerk of the County Court for said County, Samuel Holloway, a subscribing witness, who, after being duly sworn, deposeth and saith, that he saw William Braly, Sheriff, as aforesaid, sign, seal, and deliver the foregoing deed, on the day and year therein mentioned to the aforesaid Jack T. Griffin, and further, that he saw D. J. J. W. Fulton, a subscribing witness thereto, subscribe his name as a witness, and that he signed his name thereto as a witness in presence of Wm. Brawly and Fulton, and all in presence of each other, for the purposes therein expressed.

Given under my hand and seal, this 15th day of March, 1842.

MOSES McGUIRE,
Clerk.

Filed for registration on the 15th day of March, A. D. 1842, and on the 16th day of same month and year, recorded in Book S, pages 104 and 105.

MOSES McGUIRE,
Clerk.

The plaintiff then introduced the following deposition of Peter Martin:—

DISTRICT COURT OF THE UNITED STATES,
in and for the Northern District of the State of Mississippi, at Pontotoc:

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE. } Middle District of Alabama, ss:

James S. Reynolds, of Tuscaloosa County, State of Alabama, being sworn, says he is the plaintiff in the above entitled cause, that he is advised by his counsel, and verily believes, that the testimony of Peter Martin, of Tuscaloosa County, State of Alabama, is material and necessary for this deponent, in the prosecution of such cause; that the said Peter Martin and Henry Hyche live in Tuscaloosa County, State aforesaid, more than one

hundred miles from Pontotoc, where the Court at which this deponent expects the said cause will be tried, is appointed by law to be held. And this deponent further says, that, as he is informed and believes, Jack T. Griffin and wife, the abovenamed defendants, reside at Houston, Chickasaw County, State of Mississippi, about twenty-six miles distant from Tuscaloosa, the place where the examination of the said witness is expected to be taken, and that as he is also informed, and believes, Ormond & Nicholson, the attorneys of the said Jack T. Griffin and wife, reside at Tuscaloosa aforesaid.

DISTRICT COURT OF THE UNITED STATES,

in and for the Northern District of the State of Mississippi, at Pontotoc:

JAMES S. REYNOLDS
vs.
JACK T. GRIFFIN AND WIFE.

Let Peter Martin, the witness named in the above affidavit, be examined *de bene esse* before me accordingly, at my office, in the city of Tuscaloosa, State of Alabama, on Saturday, the twenty-sixth day of November, 1853, between the hours of nine o'clock A. M. and five o'clock P. M., and let days' notice be given to the said defendant of such examination.

Be it remembered that on the twenty-first day of November, one thousand eight hundred and fifty-three, between the hours of nine o'clock A. M. and five o'clock P. M., James S. Reynolds personally appeared before me, Jo. C. Guild, Mayor of the city of Tuscaloosa, State aforesaid, and made oath that he, the said James S. Reynolds, was plaintiff in a suit then depending in the District Court of the United States in and for the Northern District of the State of Mississippi, at Pontotoc, wherein Jack T. Griffin and wife were defendants; that the testimony of Peter Martin was material and necessary for him, the said plaintiff, in the prosecution of such suit; and that they, the said Peter Martin and Hyche, lived in Tuscaloosa County, State of Alabama, more than one hundred *hundred* miles from Pontotoc, where the Court at which he, the said plaintiff, expected the said cause would be tried, was appointed by law to be held; that Jack T. Griffin and wife, the abovenamed defendants, resided at Houston, Chickasaw County, State of Mississippi, about twenty-six miles from Pontotoc, aforesaid, and that Ormond & Nicholson, his attorneys, resided at Tuscaloosa, more than one hundred miles from Pontotoc, aforesaid. And the said James S. Reynolds requested me that the said Peter Martin might be examined according to the direction of the act of Congress in such case made and provided.

Whereupon I ordered that the said Peter Martin should be examined *de bene esse* before me, at my office, in said city of Tuscaloosa, State aforesaid, and that ten days' notice should be given to the said Jack T. Griffin and wife of such examination, to the end that they

might, if they should see fit, be present at the examination, and put interrogatories; and I having satisfactory proof that such notice had been given, and as well the said James S. Reynolds as the said Jack T. Griffin appearing before me, at my office, in the said city of Tuscaloosa, on this, the twenty-sixth day of November, I have, therefore, proceeded with the said examination. And the said Peter Martin being carefully examined, and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith: I have been a practising lawyer in Tuscaloosa for more than twenty years. About the 1st of March, 1846, Thomas P. McConnell placed in the hands of myself and partner (B. W. Huntington) a note for collection, executed by James S. Reynolds and his wife, Mary Ann Reynolds, on the 4th day of September, 1843, to secure to Jack T. Griffin, or order, the payment of seventeen hundred and fifty dollars, on the 1st day of March, 1846, with interest from 1st January, 1846. On the 10th March, 1846, *we* issued a writ on said note in the name of Jack T. Griffin for the use of Thomas P. McConnell, said note not being endorsed by said Griffin to McConnell, and at March term, 1847, we obtained a judgment on said note for the sum of two thousand two hundred and three $\frac{45}{100}$ dollars; and the said note having been previously settled, a remittitur was entered upon the record for all the damages.

As well as I can remember, previous to said judgment, the plaintiff, McConnell, defendant, James S. Reynolds, and one David Johnston, met at my office, and the money was paid, as I think. I made the calculation and received my fees, according to my best recollection; the money was paid over by said David Johnston, who was at that time county administrator, and had charge of the estate of the late Thomas B. Stone, formerly the husband of Mrs. Reynolds. The said note before described was also secured by deed in trust made by said Reynolds, on eleven hundred and eighty acres of land conveyed to one Abram Winn, trustee, &c.

Jack T. Griffin was not in my office at the time of the settlement referred to, or did he know of it to my knowledge. I did not see the note executed; as to the consideration of the note I know nothing except information professionally received, which I decline to state.

The deed in trust and the judgment referred to are of record in the Circuit and County Courts of Tuscaloosa County, Alabama.

P. MARTIN.

The testimony of the above witness, Peter Martin, was taken one day previous to notice by consent, both parties being present.

I, the said Jo. C. Guild, Mayor, &c., as aforesaid, do further certify that the preceding deposition was reduced to writing by the said Peter Martin, in my presence, and signed by the said witness; also, that the plaintiff declined taking the testimony of Henry Hyche; also, that the corrections and interlineations in the caption were made

by me, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the City of Tuscaloosa, this the twenty-eighth day of November, A. D. 1853.

[SEAL.] JO. C. GUILD,
Mayor of the City of Tuscaloosa.

Commissioner's fee, $2 50, paid by plaintiff.

To the introduction of this deposition the defendant objected, because it detailed matters of record. The Court overruled the objection, and the defendant excepted.

The Court charged the jury:—

1. That although Reynolds may have testified in the case of Stoddard and Murphy *vs.* Griffin, yet if he did not testify in favor of the plaintiffs in that cause upon some material point in the case, the record was evidence in his behalf. That if Reynolds did testify to any material point in said cause, that the record was no evidence in this suit.

To this charge the defendant excepted.

2. That if there was any fraud and collusion between Reynolds and any other party in obtaining the said judgment, it was not evidence for the plaintiff in this cause.

3. That the suit of Stoddard and Murphy, trustees, &c., *vs.* Griffin, could be instituted and prosecuted without the knowledge, approbation, or consent, and against the wishes of the said trustees, in behalf of a *bona fide* debtor of the said firm of Conrow, Ramsey & Co.

To this charge the defendant excepted.

4. That if said suit was instituted in fraud, and not on behalf of a *bona fide* creditor of said firm, it was void.

5. That the plaintiff, Reynolds, was not compelled to wait, after the rendition of said judgment, until actually turned out by the sheriff; but that he may retire before the said land previous to the actual execution of a writ of possession by the sheriff.

To this charge the defendant excepted.

6. That if the deed from Oliver to James McCown, as trustee of the firm of Conrow, Ramsey & Co., was designed to hinder and delay creditors, it was void, and would not constitute a paramount title in the trustee; but that the said deed was not void upon its face, as against the defendant.

To this charge the defendant excepted.

7. That if there was any outstanding paramount title to that of Griffin, the plaintiff might surrender to that title at any time; and it was not necessary that said paramount title should have been hostilely asserted against him, and a demand made upon him to surrender to said title by the party holding the same.

To this charge the defendant excepted.

8. That if the plaintiff had not lost all the land conveyed to him by the defendant, then the jury might allow him the average value of the part lost, in proportion to the price paid by him for the whole.

To this charge the defendant excepted.

The defendant asked the Court to charge the jury:

That this is an action for damages, and that the plaintiff can only recover the value of the part lost, if a part only was lost, *at the time of the eviction*, in proportion to the amount he paid; and that if only a portion of the land was lost, and the plaintiff has not shown the extent and amount of his damages, then only nominal damages can be given.

This charge the court refused, and the defendant excepted.

To revise the exceptions taken to the action of the Court by the defendant, the defendant now files his bill of exceptions, and prays that the same may be signed, which is accordingly done in proper time.

S. J. GHOLSON. [SEAL.]

And afterwards, to wit: on the 14th day of December, 1853, the defendants filed their writ of error bond in this cause, in the words and figures following, to wit:—

UNITED STATES OF AMERICA,
Northern District of Mississippi, sct:

Know all men by these presents, that we, Jack T. Griffin, and Elizabeth Griffin, Alonzo H. Taylor, are held and firmly bound unto James Y. Reynolds, just and full sum of thirteen thousand dollars, lawful money of the United States, to be paid to the said James Y. Reynolds, his lawful attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, firmly by these presents, sealed with our seals, and dated 12th day of December, A. D. one thousand eight hundred and fifty-three.

The condition of the above obligation is such that whereas, at a term of the District Court of the United States for the Northern District of Mississippi, commenced and held at the town of Pontotoc on the first Monday of December, A. D. 1853, judgment was rendered by said Court in favor of the said James Y. Reynolds, and against the said Jack T. Griffin, and Elizabeth Griffin, his wife, for the sum of six thousand three hundred and eighty-seven $\frac{55}{100}$ dollars and costs of suit, and the said Jack T. Griffin and Griffin have sued out a writ of error from the Supreme Court of the United States, to reverse said judgment.

Now, if the said Jack T. Griffin, and Elizabeth Griffin, his wife, shall prosecute their said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises, if they, the said Jack T. Griffin

and Griffin his wife, shall fail to make their plea good, then and in that case, this obligation to be void; otherwise, to remain in full force and virtue.

JACK T. GRIFFIN. [SEAL.]
ELIZABETH GRIFFIN. [SEAL.]
A. H. TAYLOR. [SEAL.]

Sealed and delivered in presence of
S. J. GHOLSON.

Upon said bond are the following endorsements, to wit:—

I, Samuel J. Gholson, Judge of the United States District Court for the Northern District of Mississippi, hereby approve the within and foregoing bond and security.

Given under my hand this 12th day of December, A. D. 1853.
S. J. GHOLSON.

Filed in my office, this the 14th day of December, A. D. 1853.
R. W. EDMONDSON,
Clerk.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

I, Robert W. Edmondson, Clerk of the District Court of the United States for the Northern District of Mississippi, do hereby certify that the foregoing one hundred and sixty-four pages contain a full, true, and perfect transcript of the original papers and proceedings filed and had in the cause therein stated, as fully and completely as the same remain of record, and on file in my office; and also of the writ of error bond filed in said cause, and the endorsements of the Judge and Clerk thereon.

In testimony whereof, I, Robert W. Edmondson, Clerk of said Court, have hereunto set my hand and affixed the seal of said Court, at office in Pontotoc, this the 14th day of January, A. D. 1854.
[SEAL.] R. W. EDMONDSON,
Clerk.

UNITED STATES OF AMERICA, SS:

The President of the United States, to the Judge of the District Court of the United States for the Northern District of Mississippi, greeting:—

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, between James Y. Reynolds, plaintiff, and Jack T. Griffin and Elizabeth Griffin, his wife, defendants, a manifest error hath happened, to the great damage of the said Jack T. Griffin and Elizabeth Griffin, his wife, as by their complaint appears:

We, being willing that error, if any hath been, should be duly cor-